(34,027)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 42

INTERNATIONAL SHOE COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

	Original	Print
Proceedings in the United States circuit court of appeals, first circuit	4	1
Petition for review	4	1
Stipulation to amend petition	30	20
Proceedings before Federal Trade Commission	31	21
Secretary's certificate (omitted in printing)	31	
Complaint	32	21
Answer	35	24
Order appointing examiner	36	25
Motion for leave to take further testimony, etc	37	26
Statement of evidence	41	29
Appearances of counsel	41	29
Testimony of Frank C. Rand	41	30
Jackson Johnson	140	143
F. A. Sudholt	185	178
Byron A. Gray	195	190
Stanley King	213	213
F. A. Sudholt (recalled)	331	338
Frank C. Rand (recalled)	332	339

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INDEX.

	Original	Print
Colloquy between court and counsel	335	342
Testimony of Clifton H. Dwinnell	339	346
Stanley King (recalled)	350	358
Ernest S. Gile	353	361
William A. Copeland	359	368
Clifford F. Warren	372	382
Claude A. Ellison	425	439
F. C. Rand (recalled)	429	444
Clifford P. Warren (recalled)	479	494
Paul B. Holmes	485	501
Edwin C. Rodger	493	509
Motion to reconsider and set aside order	500	517
Findings of fact and conclusion	502	519
Order to cease and desist	526	542
Dissenting opinion, Humphrey, C.	528	544
Extensions of time to submit plan, etc.	531	547
Motion to suspend operation of order	533	548
Motion for reconsideration	533	549
Order suspending execution of order	540	555
Petition for reconsideration and dismissal of complaint	541	556
Order for hearing	543	558
Order denying motion for reconsideration and dismissal of complaint	544	558
Order disapproving plan of compliance	545	559
Exhibit "A"—Correspondence	553	560
Commission's Exhibits:		
1—Letters, May 24, 1921, McElwain Co. to stockholders and to Lee, Higginson & Co.	570	578
2—Advertisement in the "World," May 20, 1921	583	590
3—Minutes of board of directors of International Shoe Co., June 19, 1923	584	590
4—Agreement, June 20, 1923, McElwain Co. and International Shoe Co.	584	591
5, 6—Minutes of board of dircetors of International Shoe Co., June 19, 1923, and June 12, 1923	586	593
7—Interview, May 17, 1921, Rand and Boston News Bureau	591	598
8—Letter, June 20, 1923, King to Rand	593	600
9—Copy of note, June 21, 1923, International Shoe Co. to National Bank of Commerce	594	600
10—Letter, June 28, 1923, International Shoe Co. to King	596	602
11—Telegram, June 18, 1923, Rand to King	596	602
12—Statement of account of International Shoe Co. with National Bank of Commerce for June, 1923	597	603
13—International Shoe Co. catalogue of 1921	598	603
14—Letter, May 24, 1923, International Shoe Co. to McElwain Co.	604	604

	Original	Print
5—Notice of special meeting of stockholders of McElwain Co., June 20, 1923	606	605
16—Letter, June 15, 1923, King to Old Colony Trust Co.	607	607
17—Statement of account of McElwain Co. with National Bank of Commerce of June, 1923	608	608
18—Copy of note, June 21, 1923, International Shoe Co. to National Bank of Commerce	608	608
19, 20—National Bank of Commerce deposit slips, June 21, 1923, International Shoe Co	610	610
21—National Bank of Commerce deposit slip, June 21, 1923, McElwain Co	611	610
22—National Bank of Commerce deposit slip, June 21, 1923, Bennett, Limited	611	611
23—Statement of account of Bennett, Limited, with National Bank of Commerce, June, 1923	611	611
Respondent's Exhibits:		
1—McElwain Co. balance sheet, April 30, 1921	613	613
2—Minutes of board of directors of International Shoe Co., May 9, 1921	614	613
3—Letter, May 10, 1921, Rand to McElwain	616	615
4—Agreement, May 11, 1921, International Shoe Co. and McElwain Co	617	616
5, 6—Minutes of board of directors of International Shoe Co., May 12, 1921	620	619
7—Letter, May 12, 1921, International Shoe Co. to Storrow	622	622
8—Telegram, May 14, 1921, International Shoe Co. to Storrow	624	623
9—Letter, May 14, 1921, International Shoe Co. to McElwain	624	624
10—Letter, May 18, 1921, International Shoe Co. to Lee, Higginson & Co	625	624
11—Letter, June 12, 1921, Rand to King	627	626
12—Telegram, December 8, 1921, Rand to King	628	628
13—Letter, December 9, 1921, Rand to King	629	628
14—Telegram, December 9, 1921, King to Rand	631	630
15, 16—Letters, June 23, 1922, May 18, 1923, Rand to King	632	630
17—Letter, May 24, 1923, Rand to McElwain Co	633	632
18, 19—Offers of International Shoe Co., June 4, 1923, to purchase McElwain Co	633	632
20—Minutes of board of directors of International Shoe Co., June 12, 1923	637	636
21—Memorandum of agreement, International Shoe Co. and Bennett, Limited, June 15, 1923	639	638
22—Letter, February 20, 1923, King to Blake	640	639
23—Letter, April 9, 1921, Johnson to McElwain Co.	641	630
24—Letter, April 19, 1921, McElwain to Johnson	642	641
25—Statement of February 28, 1921	646	645

	Original	Print
26—Circular letter to stockholders of International Shoe Co., June 16, 1921	647	646
27—Auditor's statement, January-May, 1921, International Shoe Co	651	650
28—Statement	653	653
29—Statement of sales of McElwain Co. and International Shoe Co., 1921-1923	654	654
30—Income account and balance sheet of McElwain Co. for year ending May 31, 1920	655	655
31, 32—Balance sheets of McElwain Co., May 31, 1921	656	655
33—Balance sheets of McElwain Co., November 30, 1921	658	657
34—Memorandum of estimated losses of McElwain Co., April 2, 1921	658	658
35—Estimated balance sheet of McElwain Co. for fiscal year ending May 31, 1921	659	659
36—Table of total production of McElwain factories, etc	660	659
36A—Chart	660	659
37—Sales of McElwain Co. for year ending May 31, 1921	663	660
38—Letter, June 12, 1923, Rand to McElwain Co.	684	673
39—Record of shoes produced by McElwain factories, 1920-1924	685	674
40—Record of sales of McElwain Co., portions of 1919-1920 and 1920-1921	685	674
41—Letter, June 8, 1923, McElwain Co. to Lee, Higginson & Co	686	675
42—Letter, June 15, 1923, Lee, Higginson to Warren	686	675
43—Letter, June 12, 1923, McElwain to Ellison	687	676
44—Letter, Ellison to McElwain Co	688	677
45—Minutes of stockholders' and directors' meeting, June 20, 1923, McElwain Co	688	677
46—Invoice, August 12, 1920, International Shoe Co. to Consolidation Coal Co	702	690
47—Summary of towns of less than 10,000 containing McElwain customers	702	690
48—Summary of populations, etc	704	692
Motion to have complaint adjudged insufficient	707	695
Opinion, Anderson, J	722	705
Minute entry	732	715
Order denying motion to have complaint adjudged insufficient	732	715
Minute entry	732	715
Final decree	732	715
Clerk's certificate (omitted in printing)	733	
Order granting rehearing, supreme court	734	715
Order allowing certiorari, supreme court	736	716

[fols. 1-4]

IN UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

INTERNATIONAL SHOE COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

Original Petition to Review

PETITION TO REVIEW AN ORDER OF FEDERAL TRADE COMMISSION

Comes now the International Shoe Company, petitioner herein, and prays the Court to review and set aside a certain order heretofore entered against it by the Federal Trade Commission and represents and shows to the Court the following:

1. The International Shoe Company is now, and since about March 16, 1921, has been, a corporation organized and existing under the laws of the State of Delaware, with [fol. 5] its principal place of business in St. Louis, Missouri. It is now, and since the date of its organization has been, engaged in the business of manufacturing and selling a general line of shoes, with some forty odd factories located in various towns in Missouri, Illinois and Kentucky.

2. The W. H. McElwain Company was in March, 1921, and for several years prior thereto had been, a corporation organized under the laws of Massachusetts, with its principal place of business in Boston. It was then, and for several years preceding the period indicated had been, engaged in the business of manufacturing and selling men's and boys' dress shoes. Its factories were located in New England.

3. During the period indicated both concerns were engaged in selling and transporting shoes in interstate commerce. In the effort to determine to what extent, if any, competition existed between the two concerns, these facts and circumstances are to be considered: The International Company had an aggregate capacity of approximately

70,000 pairs per day, but its capacity for men's dress shoes did not exceed 3,000 pairs per day. The McElwain Company did not make a general line of shoes, but confined its activities to the production of men's dress shoes for which it had a factory capacity of approximately 38,000 pairs daily, but an actual production during the spring of 1921 of not to exceed 6,000 pairs per day. The International Company sold its shoes generally throughout the United States, but principally in the South and West. The McElwain Company sold its product generally throughout the United States likewise, but principally in New England and [fol. 6] south along the Atlantic seaboard. The International Company sold its shoes exclusively under its own brands to retailers direct, and approximately 95 per cent of its sales were made in towns having a population of 6,000 or less. The McElwain Company sold its product principally through jobbers and to dealers in large cities and towns having a population of 10,000 or more, and frequently under the trade name of the particular dealer. In sum, the selling potentiality of the International Company's shoes resided in durability, while that of the McElwain Company was attendant upon style and finish.

The pressure of competition between the two concerns, if any there was prior to March, 1921, had been so indirect and slight that it did not operate to mold or influence the trade policies or prices of either concern.

4. In March, 1921, a general financial depression had about reached its peak and had spread over the nation, affecting all business in general and the shoe industry in particular. The International Company, for various reasons, had not been adversely affected, but was in a healthy financial condition, and had taken orders for a quantity of shoes largely in excess of its capacity to produce, and was in need of additional factories with trained operatives to supply its additional requirements. In this situation, early in April, 1921, officers of the McElwain Company, without previous notification of their intentions, appeared in St. Louis and suggested a sale of the McElwain assets and business to the International Company. This was done without previous overtures, direct or indirect, by the latter. At the time the officers of the International Company [fol. 7] owned no stock in the McElwain Company and had

no information as to its financial condition, or the state of its business. The representatives of the McElwain Company thereupon revealed the fact that that company then owed approximately seventeen million dollars of a due date about May 31, 1921, which the company could not pay, and as to which an extension of time was not obtainable. In addition they made known the fact that customers had canceled orders for shoes of the aggregate value of about seven million dollars, and new orders had practically ceased. These facts were then unknown, except to the principal creditors and executives of the McElwain Company. However, the fiscal year of the company was May 31st, at which time a full and true revelation of actual conditions was due. In this predicament representatives of the McElwain Company urged the officers of the International Company to purchase the business and assets, and urged such purchase as the exclusive alternative to insolvency proceedings, which unavoidably would be precipitated by the financial statement at the close of the fiscal year, and which would involve creditors and stockholders in a heavy loss. After several days negotiations the respective officers and representatives arrived at a mutually satisfactory valuation of the entire assets and business. By agreement this sum was paid in the form of a consideration for the share capital of the McElwain Company; a definite value having been assigned to each class of stock. The International Company stipulated for such allocation of the purchase price in order that a fair portion thereof might be distributed among holders of the common stock, [fol. 8] which group embraced many employes in the McElwain organization, whose experience and skill were deemed essential to the future conduct of the business by the International Company. The transaction was consummated May 11, 1921. Thereafter, the International Company advanced the McElwain Company approximately twelve million dollars to meet its obligations and gave orders for a large quantity of shoes.

5. On May 18, 1923, approximately two years after the transaction above mentioned, and after the International Company had devoted approximately twelve millions of dollars in an effort to render the business of the McElwain Company profitable, the Federal Trade Commission filed

a complaint against the International Company, charging, in substance, that the effect of the acquisition of the stock of the McElwain Company by the International Company was to substantially lessen competition between the two corporations; to restrain commerce in the shoe business and to tend to create in the International Company a monopoly in interstate commerce in the shoe business, all in alleged violation of Section 7 of the Act of Congress of October 15, 1914, known as the Clayton Anti-trust Act. Said complaint made no allegation, averment or recital, direct or indirect, of the insolvent condition of the McElwain Company in May, 1921.

The International Company filed its answer to the complaint about July 5, 1923, admitting the purchase of the stock, but denying the existence of competition between the two corporations as charged, and a violation of the Clayton Act, and further averring that, subsequent to the filing of [fol. 9] the complaint (but before the answer was drawn), the International Company had divested itself of all stock of the McElwain Company.

6. Thereupon testimony was taken before an Examiner of the Commission, and the same was reduced to writing and filed with the Commission, together with a written report of said trial examiner. On April 1, 1925, the matter was argued before the Commission, and on the 29th day of July, 1925, the Commission, by a majority vote of three (two members dissenting), made formal findings of fact to the effect that by the acquisition of the McElwain stock the International Company had violated the statute, and thereupon the Commission entered its order, which (omitting caption) is in words and figures as follows, to wit:

"This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on International Shoe Company, the answer of the respondent thereto, the testimony and evidence on file, and the brief and arguments of counsel. Thereupon the Federal Trade Commission made a report in writing, in which it stated its findings as to the facts, with its conclusion that International Shoe Company is and has been violating the provisions of an Act of Congress approved October 15, 1914, entitled 'An Act to supplement existing laws against un-

lawful restraints and monopolies, and for other purposes,' and especially section 7 thereof.

"It is Therefore Ordered that International Shoe Company:

"1. Divest itself of all stock or share capital of W. H. McElwain Company, a corporation, which it may now hold [fol. 10] or own, directly or indirectly, together with all right, title, interest and claim in and to such stock or share capital, substantially all the stock or share capital of W. H. McElwain Company being found and declared to have been acquired and to have been held, owned and used by International Shoe Company in violation of Section 7 of said Act of Congress.

"2. Cease and desist from the ownership, operation, management and control of the assets, properties, rights and privileges acquired by it from W. H. McElwain Company subsequent to the acquisition by it of the stock or share capital of W. H. McElwain Company, together with all improvements and additions thereto, which assets, properties, rights and privileges are found and declared to have been acquired and to be now held by International Shoe Company as the result of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company in violation of Section 7 of said Act of Congress.

"3. Divest itself of all assets, properties, rights and privileges acquired by it from W. H. McElwain Company subsequent to the acquisition by it of the stock or share capital of W. H. McElwain Company, together with all improvements and additions thereto, which assets, properties, rights and privileges are found and declared to have been acquired and to be now held by International Shoe Company as the result of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company in violation of Section 7 of said Act of Congress.

"4. Submit, within sixty (60) days from the date of this order, for the consideration and approval of the Federal [fol. 11] Trade Commission, a plan for the performance of this order in a manner which shall restore in harmony with the law the competitive conditions which existed with respect to the respondent and such assets, properties, rights

and privileges prior to the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company.

"By the Commission, Commissioners Hunt and Humphrey dissenting. Commissioner Humphrey filed a memorandum of dissent, concurred in by Commissioner Hunt, which is attached.

Otis B. Johnson, Secretary. (Seal.)

ARB/JEH."

Docket 1023

"International Shoe Company

"Dissenting Opinion of Commissioner Humphrey

"In this case the evidence shows the following facts:

"1. That the respondent acquired the stock of the McElwain Company.

"2. That the respondent and the McElwain Company, at the time, were in competition. Whether such competition was material is a matter of opinion.

"3. That the McElwain Company initiated the transaction.

"4. That at the time of the transaction the McElwain Company was in a failing financial condition, or at least its officers believed that it was, and they believed that its bankruptcy was probable.

"5. That the respondent at the time had taken more orders than it was able to fill, at its then capacity, and was [fol. 12] considerably troubled with these excess orders, and was very desirous, for this reason, of increasing production.

"6. That it used the organization and assets acquired from the McElwain Company in increasing its output largely for the purpose of filling these excess orders.

"7. That the respondent did not increase prices; on the contrary, in some instances it voluntarily decreased prices.

"8. That it made better shoes, and sold them for the same or less money than the McElwain Company was sell-

ing the same class of shoes at the time respondent acquired its stock.

"9. That the respondent did not use the stock so acquired by voting or otherwise to bring about, or attempting to bring about, the substantial lessening of competition.

"10. That the public was in no degree, in any way, injured by the transaction. On the contrary, the evidence shows that the public was benefited thereby.

"Questions of Law

"Admitting, but not asserting, that there was substantial competition between the respondent and the McElwain Company at the time of the transaction complained of, it was probable that this competition was going to be destroyed by the failure of the McElwain Company. This circumstance removed the very evil that the statute was intended to prevent. This being true, the transaction was not unlawful (American Press Association v. United States, 245 Fed. 91).

"It seems to me that this case comes squarely within the exception of paragraph one of Section 7 of the Clayton Act, as modified by paragraph three of said section.

"Was the public injured by this transaction? Contrary to the majority, I think that this is the vital, and should be [fol. 13] the determining, question in this case.

"The evidence does not show or tend to show that prices were increased by this transaction. In fact, the evidence tends to show that prices were reduced. The evidence also tends to show that the public was furnished with a better grade of shoes for the same or less money. Because of this transaction no one has had to pay a cent more for a pair of shoes and no one has been caused to buy a pair of shoes of inferior quality.

"The extent of the respondent's sinning, in so far as the evidence shows, was that it bought the stock of a competitor at the instance of that competitor, to save such competitor from bankruptcy, and to acquire additional facilities which it badly needed to fill orders that it had already taken.

"There is no evidence showing that this stock was bought for other than investment purposes, nor is there evidence

showing that such stock has been used in any manner to substantially lessen competition.

"Had the respondent been content to wait, if we are to be guided by the evidence, then in a short time its competitor would have been bankrupt. The stockholders would have lost their entire investments, a great organization would have been destroyed, and the competition with which the respondent is charged with destroying would have been wiped out without cost to the respondent of a dollar.

"In this case the Commission has given warning to the business world that no one must answer the cry of distress. If they do and save a vessel from complete wreck no matter [fol. 14] what the effect may be upon the public they will be condemned and must suffer the penalty. But it will be perfectly proper and commendable to stand by until the vessel sinks and its competition with them is thereby entirely destroyed, and then pick up whatever flotsam and jetsam they may, but under no circumstances must the vessel be saved, however much it may be to the public interest. I think such policy must inevitably injure the public and be immeasurably detrimental to our industries.

"I cannot be oblivious to the fact that by the issuance of this order many innocent investors will be injured and that no one will be benefited.

"The position of the majority in this case, if I correctly understand the facts, is that if one corporation acquires all of the stock of another competitive corporation such acquisition is in violation of the Clayton Act, regardless of the purpose, effect and result of the acquiring of such stock, and that the Commission must issue an order under such circumstances against the offending corporation, the Commission having no discretion to do otherwise.

"To this opinion I cannot subscribe. It is true that the phrase 'in the interest of the public' is not written in the Clayton Act as it is in the Federal Trade Commission Act, in words, but, in my judgment, it is there by implication as plainly as if it were written in letters.

"To issue this order will in all probability cause innocent stockholders to lose several million dollars. It will do no good to anyone. I cannot bring myself to believe that it is the duty of the Commission to issue an order where no good will result and evil must follow.

[fol. 15] "I, therefore, find myself compelled to dissent from the opinion of the majority.

(Sgd.) W. E. Humphrey, Commissioner.

"I concur. (Sgd.) C. W. Hunt.
7/10/25."

Thereafter petitioner filed with the Commission a motion to suspend the operation of said decree pending the decision of the Supreme Court of the United States in the case of Thatcher Manufacturing Company v. Federal Trade Commission; that said motion for suspension was granted. That after the decision in the above-mentioned case petitioner filed with the Commission a petition for a rehearing and a motion to set aside said order. Said petition was granted.

Thereafter, on May 7, 1927, said motion was argued before the Commission and the same was overruled and denied and said order was reinstated as written.

Thereafter, on June 20, 1927, the petitioner, in an effort to buy its peace with the Commission and to escape the harassment and expense of further litigation, tendered a plan of compliance with said order.

In and by said tendered plan of compliance petitioner proposed to offer for sale all of the assets embraced by said order at a price not less than the sound appraised value thereof, such value to be checked, verified and approved by the Commission and the details of the offering to be approved by the Commission. Thereafter, on June 30, 1927, the Commission rejected said plan of compliance and authorized counsel for the Commission to confer with counsel [fol. 16] for the petitioner with a view of formulating an acceptable plan for complying with the Commission's order.

Thereafter counsel for the respective parties held numerous conferences and made an industrious effort to formulate such plan, but were unsuccessful.

By its said order the Commission contemplated a divestiture of said assets by the petitioner so that other persons would continue to use the McElwain plants in the production of shoes in competition with the petitioner. Said assets represent an investment and a value (stated in round figures) of five million dollars. To produce a profitable

volume of shoes in said plants requires an additional sum of about six million dollars as operating capital. The insurmountable difficulty was and is that no one can be induced to invest such sums in the business under the circumstances given.

Accordingly, on February 24, 1928, petitioner filed with the Commission a written report of said conferences and of the inability of counsel to formulate a plan for complying with said order. Petitioner further represented and showed the Commission that petitioner had made an industrious effort through brokers and financiers to sell said assets privately, but had been unable to induce an offer therefor.

And at the same time petitioner moved the Commission for permission to take further testimony and in said motion it alleged and offered to prove by testimony to the satisfaction of the Commission:

"First. That such assets cannot be sold outright at either [fol. 17] public or private sale for any reasonable price to a responsible purchaser who can and will continue the production of shoes in the factories.

"Second. That in 1921 the McElwain Company could not have continued the production of shoes without the financial backing of respondent.

"Third. That at no time since 1921 could the McElwain Company have continued in the shoe business without the capital, merchandise orders and trade supervision furnished by the respondent.

"Fourth. That any reorganization of the McElwain Company (such as contemplated in the plans heretofore mentioned) would have no reasonable chance of succeeding without such capital, merchandise orders and trade supervision furnished by the respondent.

"Fifth. That without such threefold backing by the respondent investors cannot be induced to embark capital in the business formerly conducted by the McElwain Company.

"Sixth. That in 1921 (Trial Examiner's Report Upon the Facts, p. 14): 'In effect, the McElwain Company became a branch of respondent,' and that it has been since and is

now used and held out to the trade world as such subsidiary branch 'for the actual carrying on of' the 'immediate lawful business' of the respondent 'or the natural and legitimate branches or extensions thereof' as is authorized by paragraph 3 of Section 7 of the Clayton Act."

After filing said motion counsel for petitioner informed the secretary of the Commission of his desire to be heard before the Commission, either formally or informally, at the [fol. 18] earliest hour convenient to the Commission. On Monday, February 27, 1928, the Commission denied said motion without affording counsel for petitioner any opportunity to be heard informally or otherwise.

7. The petitioner prays the Court to review and set aside said order and every part thereof for the reasons following:

First. The complaint does not state facts sufficient to constitute a violation of the statute in this:

(a) The charges of wrongdoing set forth in the complaint are legal conclusions; they are undisclosed notions of the law applied to an undisclosed state of facts.

(b) There is no statement as to the volume of business that either concern carried on in interstate commerce; no statement that either alone or both combined carried on any definite portion of the commerce in shoes; no statement as to what portion or extent of the United States such competition affected; no statement with respect to what kind of shoes the two concerns were competitors; no statement as to what extent they were in competition as regards any particular kind of shoe or all kinds of shoes made by either; no statement whether such competition was with respect to quality, price, style or all of these features; no statement as to whether such alleged competition affected the shoe trade in the large cities or in rural communities or both.

(c) The averments of the complaint are so general, vague and indefinite that the bare fact that (1) both concerns were engaged in interstate commerce, however negligible the volume of their trade, and (2) that they were in

[fol. 19] competition, however slight the extent, make the stock acquisition unlawful.

The complaint does not charge, directly or by implication, a purpose, intent or design to lessen competition by such stock acquisition. It does not charge that the alleged lessening of competition was the direct, or immediate, or necessary, effect of such acquisition, and it does not charge any fact from which any one of said effects is fairly to be inferred.

(d) Although purporting to be induced by considerations of public interest, the complaint does not charge any fact tending to show an injury to the public interest, and more particularly,

(e) The complaint does not charge an intent, design, purpose or tendency to accomplish, or the actual accomplishment, of any one or more of the following:

(1) raising the prices of shoes to the public;

(2) limiting the quantity produced of such shoes;

(3) deteriorating the quality of such shoes;

(4) decreasing the prices paid for labor or materials required to produce such shoes;

(5) unfair or oppressive treatment by petitioner of any competitor engaged in the business of producing and selling such shoes.

Second. The findings of fact do not include facts sufficient to support the order in this: Said findings do not include facts showing, or tending to show, any detriment to the public interest from the acquisition of the McElwain stock by petitioner, and more particularly said findings [fol. 20] do not establish that said acquisition had any one or more of the effects following:

1. To raise the prices of men's dress shoes to the consumer.

2. To limit the production of such shoes.

3. To deteriorate the quality of such shoes.

4. To decrease the price paid for labor or materials required to produce such shoes.

5. Unfair or oppressive treatment accorded to competitors by petitioner.

Third. The finding of fact that the acquisition of the McElwain stock by petitioner had the effect of substantially lessening competition between the McElwain Company and the petitioner is not supported by any evidence. The record shows beyond dispute and to the contrary the following:

(a) That in March, 1921, the McElwain Company was insolvent; that is to say, it was unable to pay its debts as they became due.

(b) That its officers, directors and principal creditors were convinced that within sixty days the company had to choose between insolvency proceedings and a sale of the assets to petitioner.

(c) That by reason of the insolvency of the McElwain Company, competition, whether actual or potential, between that company and petitioner had been eliminated before the stock acquisition was suggested by the McElwain Company.

(d) That the elimination of the McElwain Company as a competitor in the shoe industry with the International Company or with others, brought about by the insolvent condition of the McElwain Company, was the occasion, in- [fol. 21] ducement and efficient cause of said stock acquisition by the International Company, and not its effect, as set forth in he findings.

Fourth. The finding of fact that the acquisition of the McElwain stock by the petitioner had the effect to restrain commerce or trade in men's dress shoes is not supported by any evidence. The record shows to the contrary and beyond contradiction that the effect of said acquisition was to expand and increase trade in these respects, to wit:

(a) To greatly increase the quantity of shoes produced by the McElwain factories.

(b) To improve the quality thereof by the substitution of real leather for imitations thereof.

(c) In many instances to lower the price of such shoes and in no instance to raise them.

(d) To furnish employment to several thousand employes who would have lost their jobs except for the purchase of the McElwain Company by petitioner.

(e) To save the shareholders of the McElwain Company a severe loss aggregating several million dollars, with which they were threatened by the insolvent condition of the company.

Fifth. The complaint and findings of fact are insufficient to support any valid order of the Commission against the petitioner, in that throughout both complaint and findings the interests of the public are put out of view and the real facts are disregarded in the attempt to give effect to nominal conditions.

That is to say:

(a) The object, intent and purpose of seller and purchaser in said transaction and the effect of the transaction [fol. 22] on commerce can be explained or understood only by taking into consideration the insolvent condition of the McElwain Company in March, 1921, yet that fact is not mentioned in the complaint and is evasively controverted in the findings by finding that the McElwain Company was not insolvent for purposes of bankruptcy proceedings under the National Bankruptcy Act of 1898.

(b) In the complaint and throughout the findings of fact the transaction complained of is characterized and dealt with as the purchase by petitioner of of a controlling stock interest in the McElwain Company, whereas the record shows without contradiction or qualification that both seller and purchaser had in mind exclusively a transfer of the entire assets and business of the McElwain Company and that the only reason for employing the form of a stock purchase was to distribute a portion of the purchase price among holders of the common stock who comprised the skilled organization of the McElwain Company, and thereby to preserve the organization, interest and enthusiasm of such shareholding employes and identify their interests with those of the International Company, as the purchaser of said assets and business.

(c) In the findings of fact it is made to appear that an actuating motive and purpose of petitioner in making said

purchase was to get rid of the McElwain Company as a competitor, whereas the record, in addition to the irretrievable insolvency of the McElwain Company, shows further that there never had been palpable or measurable competition between the two companies, and that, in the spring of 1921, petitioner had on its books orders in excess of its capacity to produce by approximately twelve million dollars.

[fol. 23] Sixth. The finding that "W. H. McElwain Company was not insolvent prior to the acquisition of its stock or share capital by the respondent nor subsequent thereto" is an erroneous and unpermissible inference from facts that are wholly undisputed. A majority of the Commission has found that the McElwain Company was not insolvent for the purpose of bankruptcy proceedings under the National Bankruptcy Act of 1898, and in so doing has disregarded the statutes of Massachusetts and the uniform decisions of the highest court in Massachusetts declaring a person (firm or corporation) to be insolvent "who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not and whether he is insolvent within the meaning of the Federal Bankruptcy Law or not."

The record shows without contradiction or qualification that by such definition the McElwain Company was insolvent in May, 1921, and that the fact of insolvency was conceded by all the executives of the company.

Seventh. The finding of fact that the effect of said purchase was to substantially lessen competition and restrain commerce is negatived by other facts established beyond dispute by the record, but entirely unnoticed in said finding, to wit:

(a) That immediately after said purchase the petitioner lowered the prices of men's dress shoes.

(b) That immediately after the purchase the petitioner increased the production of the McElwain factories and ordered the surplus.

(c) That immediately after the purchase the petitioner [fol. 24] improved the quality of the McElwain shoes by discontinuing the use of substitutes for leather.

(d) That in making said purchase petitioner did not directly or indirectly obligate the former executives of the McElwain Company to remain out of the business, but left them absolutely free to re-enter the industry in competition with petitioner, which freedom several of them made use of to re-enter the business.

Eighth. The finding of fact to the effect that prior to the purchase complained of there was substantial competition between the McElwain Company and the petitioner in the production and sale of men's dress shoes is not supported by any evidence, but, to the contrary, is precluded by several uncontested record showings, among which are the following:

(a) Over 95 per cent of petitioner's product was distributed through retail dealers in towns having a population of 6,000 or less, while the bulk of sales by the McElwain Company was made through jobbers and dealers in towns having a population of 10,000 or more.

(b) The petitioner sold direct to retailers exclusively in any quantity, including broken case lots; the McElwain Company sold the bulk of its product to jobbers and to retailers in large cities, i. e., of 10,000 population or more, and in case lots only.

(c) The petitioner tendered a moderate priced all leather shoe, the selling potentiality of which resided primarily in durability and wear, and secondarily in finish, style and appearance. The McElwain Company offered a high priced, highly finished, leather skinned shoe, and its bid for custom was based principally upon the style, finish and appearance and not upon durability and wear.

[fol. 25] (d) Petitioner invariably sold its shoes under one of its established brands, whereas the McElwain Company as a rule marketed its product under the stamp and name of the particular dealer.

(e) During the year preceding May, 1921, there were in the United States 141,867 retail shoe dealers of whom sixteen that were customers of the McElwain Company purchased all told from the petitioner 52 5/12 dozen pairs of men's dress shoes.

Ninth. The finding of fact to the effect that the sale of the McElwain stock and the purchase of the McElwain assets by petitioner after the complaint was filed was not "bona fide," but was a "subterfuge" and "artifice," is not supported by any evidence. Said finding ignores and disregards uncontroverted proof in the record that said stock was sold by petitioner in an honest attempt to comply with the expressed demands of the Commission and that the purchase of said assets was authoritatively permitted by Conference Ruling No. 8, promulgated by the Commission under date of January 31, 1916, for the guidance of business concerns of the nation. Further, said finding ignores the right of petitioner to protect its investment and collect the money due it from the McElwain Company. At the date of this transaction the McElwain Company owed the petitioner over eleven million dollars, aside from large obligations to others. These obligations the McElwain Company could not possibly pay except through a sale of its assets at approximately full value. Petitioner paid the McElwain Company more than the full value for these as- [fol. 26] sets by canceling the obligation of eleven million dollars, assuming all other obligations of the McElwain Company and paying it four million dollars in cash.

Tenth. The finding of fact unwarrantedly assumes that in the sale of the McElwain stock and the purchase of the McElwain assets by petitioner there was an element of fraud, whereas the record shows affirmatively and positively without contradiction that (a) full information concerning said sale and purchase was imparted to the Commission and to the public immediately after the transactions; (b) that no stockholder or creditor of the McElwain Company was misled or damaged, but instead both stockholders and creditors materially profited thereby; (c) that the public interest was advantageously served by said sale and purchase.

Eleventh. The order of the Commission is unwarranted, without justification or jurisdiction, in this:

(a) It is based on a complaint which fails to state facts sufficient to support the order.

(b) The findings of fact are wholly insufficient to support the order, and said findings omit findings on material and controlling facts shown by the record, which under the law would preclude jurisdiction to make such order.

(c) Paragraph 1 of the order is superfluous and without jurisdiction, the petitioner having long prior to the time of the order divested itself of all stock or share capital of W. H. McElwain Company and permanently disposed of all its right, title, interest and claim in and to such stock or share capital.

Twelfth. Paragraphs 2 and 3 of the order, in which the Commission orders the petitioner to "cease and desist [fol. 27] from the ownership, operation, management and control of the assets, properties, rights and privileges acquired by it from W. H. McElwain Company * * * together with all improvements and additions thereto," (a) are improvident because without basis in the complaint, (b) are without justification under the Clayton Act or any other statute, (c) constitute an attempt by the Commission to abrogate the effect of its Conference Ruling No. 8, shown on the record, and to deprive petitioner of its property without the sanction of any law.

Said paragraphs 2 and 3 of the order are void for the further reason that petitioner had the legal right to purchase the assets of the McElwain Company, and the Commission is without jurisdiction to order such purchase set aside; that the purchase of the properties of the McElwain Company was for a cash consideration and not by virtue of stock ownership and, therefore, not within the provisions of the Clayton Act.

Thirteenth. The order of the Commission is unwarranted, without justification and beyond the jurisdiction of the Commission, in this, that after said stock acquisition in 1921 and before the complaint herein was filed in May, 1923, the International Company advanced to the McElwain Company large sums of money, aggregating several million dollars, to enable the McElwain Company to discharge its debts and thereby avoid dissolution; that such advances are not a violation of the Clayton Act or any other law whatsoever, and such advances are not the subject of any complaint in this proceeding, yet the Commis-

[fol. 28] sion by its order commands the petitioner to divest itself of the stock and assets of the McElwain Company, wholly without reference and without regard to the International Company's claims and legal rights by reason of said advances.

Fourteenth. Said order of the Commission is void, in this, that by said order the petitioner is directed to divest itself of all assets acquired from the McElwain Company; that among the assets so acquired are two leather tanneries situated in New Hampshire; that it is not charged or asserted that the acquisition of said tanneries was in violation of the Clayton Act or that such acquisition lessened competition, restrained trade or tended to the establishment of a monopoly in either the shoe industry or the leather industry.

Fifteenth. The order of the Commission is void, in this, that it appears from the record of said proceeding that said order as written is impossible of being carried out, and that the attempt to enforce it will entail more harm to the shoe industry than good.

Wherefore petitioner prays the Court to order this petition to be filed, and thereupon to issue its process and require the Commission forthwith to certify and file in this court a transcript of the record of the proceedings against petitioner, as provided by statute, and petitioner further prays that the Court thereupon review said order and set the same aside for the reasons set forth, and for the further reason that the same is otherwise insufficient, illegal [fol. 29] and void, to the end that petitioner's rights may be established and protected under the law of the land.

International Shoe Company, by —— ——, President. Frank Y. Gladney and R. E. Blake, Attorneys for International Shoe Company, Petitioner. J. D. Williamson, of Counsel.

Duly sworn to by Frank C. Rand. Jurat omitted in printing.

[fol. 30] In United States Circuit Court of Appeals

Stipulation to Amend Petition—Filed April 17, 1928

Come now the parties in the above-entitled proceeding, by their respective attorneys, and stipulate and agree that the petition herein shall be and hereby is amended in this, to wit:

That printed paragraph 1, comprising the last three lines on printed page 1 and the first six lines on printed page 2, shall be amended by striking out the period at the end of line 6, on page 2, and inserting in lieu of said period a comma, and after said comma adding the words and figures following:

and in addition to the aforesaid factories the petitioner, on or about June 23, 1923, acquired four shoe factories and one upper leather tannery, all situated in the Town of Manchester, New Hampshire, one shoe factory in each of the Towns of Nashua, Newport, Keene and Claremont, New Hampshire, and that ever since said June 23, 1923, the petitioner has owned and operated said tannery and each of the aforesaid shoe factories, situated in New Hampshire, and that it now owns and operates them and each of them, and that since said June 23, 1923, the petitioner has maintained, and now maintains, an office or place of business at No. 590 Atlantic avenue in the City of Boston, Massachusetts, and carries on business at said places within the First Judicial Circuit of the United States.

Dated this twenty-third day of March, 1928.

Federal Trade Commission, by Robert E. Healy, Its Chief Counsel. International Shoe Company, by Frank Y. Gladney, R. E. Blake, Its Attorneys.

[fol. 31] Secretary's certificate to following papers omitted in printing.

[fol. 32] **Transcript of Proceedings Before Commission—** Filed in Circuit Court of Appeals April 11, 1928

BEFORE FEDERAL TRADE COMMISSION

Docket No. 1023

In the Matter of INTERNATIONAL SHOE COMPANY

COMPLAINT

Acting in the public interest, and having reason to believe that the International Shoe Company, hereinafter called the respondent, has violated and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914 (the Clayton Act), entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issues this complaint, against said respondent, stating its charges in that respect as follows:

Paragraph One. The International Shoe Company is a corporation organized March 16, 1921, under the laws of the State of Delaware, with an authorized capital stock of 250,000 shares of preferred stock with a par value of $100 each (or $25,000,000) and 1,400,000 shares of common stock of no stated par value, and has its principal office and place of business in the City of St. Louis, in the State of Missouri. It succeeded, and is a reorganization of, International Shoe Company, a corporation organized in 1911 under the laws of the State of Missouri, having an authorized capital stock of fifteen million dollars ($15,000,000), and the respondent succeeded to and acquired the rights and assets and assumed the liabilities of the Missouri corporation, which was thereupon dissolved. The respondent owns and operates thirty-two or more shoe factories in the States of Illinois, Missouri and Kentucky, some of which have been acquired by absorbing competing companies. [fol. 33] The respondent also owns and operates stores, selling departments and branch establishments among the sev-

eral States and the District of Columbia, and is and has been engaged in the business of manufacturing shoes for men, women, boys, children and infants, and in selling such shoes to wholesale and retail shoe dealers and other purchasers in the various States of the United States in addition to those States in which its said shoe factories are located. It causes such shoes to be shipped and transported from the factories where made, and from stores and branch establishments, to purchasers among the several States of the United States, the territories thereof, and the District of Columbia, and is engaged in interstate commerce within the meaning of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms and corporations similarly engaged.

Paragraph Two. The W. H. McElwain Company is, and at the time hereinafter mentioned was, a corporation organized under the laws of Massachusetts, with an authorized capital stock of $14,140,000, and with its principal office in the City of Boston, in said State. It owns and operates shoe manufacturing plants in the State of New Hampshire, where shoes for men and boys have been made and are manufactured, and owns and operates stores, selling departments and branch establishments in the cities of Boston, Massachusetts; New York City, New York; Columbus, Ohio; Chicago, Illinois; Kansas City, Missouri; San Francisco, California, and in other places within the several States of the United States and the District of Columbia. It was and is engaged in the business of selling such shoes to wholesalers, retailers and others among the several States of the United States, the territories thereof, and the District of Columbia, and in shipping and transporting such shoes from the factories where made and from stores and branch establishments to purchasers thereof in various cities and towns among the several States of the United States, the territories thereof and the District of Columbia, and is and has been engaged in interstate commerce within the meaning of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms and corporations similarly engaged. On and prior [fol. 34] to May 11, 1921, the respondent and the said W. H.

McElwain Company were in competition with each other in the shoe business as hereinabove described.

Paragraph Three. On or about May 11, 1921, while the International Shoe Company and the W. H. McElwain Company were engaged in commerce in competition with each other as aforesaid, the International Shoe Company acquired the whole, or substantially all, of the stock or other share capital of said W. H. McElwain Company, and still owns and controls such stock or share capital so acquired. Such acquisition of such stock or share capital of the W. H. McElwain Company was contrary to law and violative of said Act of Congress approved October 15, 1914 (the Clayton Act), and especially Section 7 thereof. The effect of the acquisition by the respondent of such stock or other share capital of the W. H. McElwain Company was, to wit:

(a) To substantially lessen competition between the W. H. McElwain Company, the corporation whose stock was so acquired, and the International Shoe Company, the corporation making the acquisition;

(b) To restrain commerce in the shoe business in the several sections and communities of the United States in which the respondent and the said W. H. McElwain were engaged in business in interstate commerce, as aforesaid:

(c) To tend to create in the respondent a monopoly in interstate commerce in the shoe business.

Wherefore, the premises considered, the Federal Trade Commission, on this eighteenth day of May, A. D. 1923, now issues its complaint against said respondent.

Notice

Notice is hereby given you, the International Shoe Company, respondent herein, that the seventh day of July, 1923, at 10:30 o'clock in the forenoon, is hereby fixed as the time, and the office of the Federal Trade Commission in the City of Washington, District of Columbia, as the place when and where hearings will be had on the charges set forth in this complaint, at which time and place you shall have [fol. 35] the right, under said Act, to appear and show why an order should not be entered by said commission re-

quiring you to cease and desist from the violation of law charged in this complaint.

In witness whereof, the Federal Trade Commission has caused this complaint to be signed by its secretary, and its official seal to be hereto affixed, at Washington, District of Columbia, this eighteenth day of May, 1923.

By the Commission:

Otis B. Johnson, Secretary. (Seal.)

RJL-o—5/11/23.

BEFORE FEDERAL TRADE COMMISSION

ANSWER OF RESPONDENT, INTERNATIONAL SHOE COMPANY

The respondent, International Shoe Company, answering the complaint filed against it by the commission, would respectfully show to the commission:

First. It admits the allegations in paragraph one of said complaint.

Second. It admits the allegations in paragraph two of said complaint, excepting that,

1. At the time of the filing of this complaint and at the time of filing this answer, the stores, selling departments and branch establishments formerly owned and operated by W. H. McElwain Company in the cities of Columbus, Ohio; Chicago, Illinois; Kansas City, Missouri, and San Francisco, California, were not owned and operated by W. H. McElwain Company.

2. Respondent denies that it and W. H. McElwain Company were in competition with each other in the shoe business on and prior to May 11, 1921.

Third. Respondent again denies that it was in competition with W. H. McElwain Company on May 11, 1921, but admits that it acquired substantially all of the stock or [fol. 36] other share capital of W. H. McElwain Company. Respondent denies any and all other allegations in paragraph three of said complaint.

Fourth. And further answering respondent would respectfully show the commission that upon receipt of the

complaint, and upon being advised that there was a possible technical violation of Section 7 of the Clayton Act, in its acquisition and ownership of the share capital of W. H. McElwain Company, this respondent took the necessary steps to remedy any such technical violation; that it has divested itself of any and all stock or share capital of W. H. McElwain Company; that it does not now own or control any stock or share capital of said W. H. McElwain Company; and that no officer, director or stockholder of respondent owns or controls any stock or share capital of said W. H. McElwain Company.

Therefore, the premises considered, this respondent respectfully asks that this complaint be dismissed.

International Shoe Company, by F. C. Rand, President. R. E. Blake, 1501 Washington Avenue, St. Louis, Mo., Attorney for Respondent.

BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ORDER APPOINTING EXAMINER—May 2, 1924

This proceeding being at issue and ready for taking testimony,

It is ordered that John W. Bennett, an examiner of the Federal Trade Commission, be and is hereby appointed [fol. 37] examiner in this proceeding, and designated to receive evidence and take testimony herein.

By the Commission:

Otis B. Johnson, Secretary.

ARB:sef. 4/25/24.

[MEMORANDUM.—A stipulation to correct the transcript of testimony dated March 31, 1925 is here omitted, as the corrections appear in the following transcript. A. I. Charron, Clerk.]

[Stamped:] Federal Trade Commission. Received Feb. 23, 1928, Secretary's Office

BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

RESPONDENT'S MOTION FOR LEAVE TO TAKE FURTHER TESTIMONY AND TO HAVE THE COMMISSION MODIFY ITS ORDER

Comes now respondent and represents and shows that on June 30, 1927, the commission disapproved a proposed plan of compliance theretofore presented by the respondent, and at the same time suggested that counsel for the respondent and counsel for the commission confer together with a view of devising a plan mutually satisfactory to the commission and to the respondent. That since the above-mentioned date counsel held several such conferences in the effort to conclude the matter.

In order that the commission may better appreciate the difficulty struggled with, the results of such efforts will be noted.

At the outset counsel for the commission proposed that the respondent reorganize the W. H. McElwain Shoe Company, in corporate form, with approximately the same number of shares as respondent now has; that respondent subscribe for all of such shares and pay therefor by transferring to the new corporation all the assets acquired from the W. H. McElwain Company in 1921, and now held by respondent, together with the current assets and working capital comprising the loans and advances made to the McElwain Company by respondent. And that thereupon [fol. 38] the respondent should distribute the stock of the reorganized McElwain Company among its shareholders share for share, with the result that thereafter the two corporations might engage in the shoe business as competitors each independent of the other.

After careful consideration the officers and directors of respondent were convinced that this plan involves insurmountable obstacles. Respondent has outstanding both preferred and common stock. The respondent could not make a distribution of capital assets among the holders of its

common stock without violating the rights of the holders of the preferred shares, and there is no legal means of allocating such distribution as between the holders of the two kinds of shares.

Thereupon counsel for respondent endeavored to draw up a plan that would obviate the objections to the one just indicated. That plan was this: That a group of shareholders of respondent, acting in their individual capacities and with their private funds, should reorganize the W. H. McElwain Shoe Company with a paid in capital approximately equivalent to the present value of the assets comprised by the commission's order; that such corporation should then purchase such assets from the respondent and pay therefor in cash. That thereupon such new corporation should execute a mortgage on the assets purchased to secure notes for the amount of respondent's cash capital utilized in the business in the form of current assets, working capital or otherwise.

And this plan so outlined counsel for the commission tentatively accepted and approved. But upon taking it up again with respondent's officers for a final consideration of the details and of the execution thereof, the plan was unanimously rejected on the ground that no shareholder would subscribe any part of the stock of such proposed new corporation unless the respondent company would in one form or another agree to indemnify him against loss by reason of such subscription. It was apprehended that the proposed plan, a feature of which was such agreement to indemnify against loss, would not meet the approval of the commission or its counsel. Hence this plan was likewise dropped.

[fol. 39] Meanwhile respondent has exhausted the chances of effectuating an outright sale of the McElwain assets privately. Through brokers and financiers familiar with the shoe industry in New England, it has industriously solicited offers for the properties. It has offered to furnish all information that might be requested and has evinced a willingness to extend liberal credits to responsible purchasers.

It has not stipulated for any fixed price, but has confined its efforts to inducing a bona fide offer of purchase from persons capable of utilizing the assets in the production of shoes. But all such negotiations have culminated in a final

refusal to make any proposal of purchase. Complete copy of the correspondence embracing these negotiations is herewith filed and marked "Exhibit A."

Respondent represents and shows that in order to comply with the commission's order, respondent must either (1) make an outright sale of the assets involved, or (2) dispose of them through some sort of a reorganization of the W. H. Elwain Shoe Company. That in one form or the other the aggregate values involved amount to over eleven million dollars.

And the respondent alleges and offers to prove by testimony to be adduced under the direction and supervision of the commission:

First. That such assets cannot be sold outright at either public or private sale for any reasonable price to a responsible purchaser who can and will continue the production of shoes in the factories.

Second. That in 1921 the McElwain Company could not have continued the production of shoes without the financial backing of respondent.

Third. That at no time since 1921 could the McElwain Company have continued in the shoe business without the capital, merchandise orders and trade supervision furnished by the respondent.

Fourth. That any reorganization of the McElwain Company (such as contemplated in the plans heretofore mentioned) would have no reasonable chance of succeeding [fol. 40] without such capital, merchandise orders and trade supervision furnished by the respondent.

Fifth. That without such threefold backing by the respondent, investors cannot be induced to embark capital in the business formerly conducted by the McElwain Company.

Sixth. That in 1921 (Trial Examiner's Report upon the Facts, p. 14), "In effect, the McElwain Company became a branch of respondent" and that it has been since and is now used and held out to the trade world as such subsidiary branch "for the actual carrying on of" the "immediate lawful business" of the respondent "or the natural

and legitimate branches or extensions thereof'' as is authorized by paragraph 3 of Section 7 of the Clayton Act.

And respondent prays that when it shall have established such facts to the satisfaction of the commission that thereupon the commission shall make such modification of its order as the public interest, in the light of the conditions shown then to exist, may require.

Respectfully submitted.

International Shoe Company, by Frank Y. Gladney and R. E. Blake, Its Attorneys.

[fol. 41] BEFORE FEDERAL TRADE COMMISSION

Docket No. 1023

In the Matter of

FEDERAL TRADE COMMISSION

v.

INTERNATIONAL SHOE COMPANY

At St. Louis, Mo., May 27, 28, 29, 30, 31, 1924

Statement of Evidence

St. Louis, Mo., May 27, 1924—10 o'clock a. m.

Before John W. Bennett, Examiner

Met pursuant to notice.

APPEARANCES OF COUNSEL

A. R. Brindley, Washington, D. C., appearing for the Federal Trade Commission.

R. E. Blake, 1505 Washington Avenue, St. Louis, Mo., appearing for the Respondent.

Examiner Bennett: The proceeding in the matter of the International Shoe Company, Docket Number 1023, is set

for hearing at this time and place. You may proceed, colonel, if you are ready.

Mr. Brindley: I ask that Mr. Rand be sworn.

FRANK C. RAND was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Brindley:

Q. 1. State your name, residence and occupation, Mr. Rand.

A. Frank C. Rand; University City; I am president of the International Shoe Company.

Q. 2. How long have you been president of the International Shoe Company?

A. Since 1916.

Q. 3. When was the International Shoe Company organized?

A. On March 16, 1921, under the laws of the State of Delaware.

Q 4. Give me a history of the preceding organizations which the International Shoe Company has succeeded.

A. It is operating at the present time with 178,000 shares [fol. 42] of preferred stock, 920,000 shares of common stock.

Q. 5. I merely wanted to know what was the predecessor company of the present International Shoe Company.

A. The International Shoe Company of Missouri was the mediate predecessor to the International Shoe Company of Delaware, and the predecessors to the International Shoe Company of Missouri were the Roberts, Johnson & Rand Shoe Company and the Peters Shoe Company of Missouri.

Q. 6. The International Shoe Company of Missouri was organized what time?

A. December, 1911.

Q. 7. And that was a corporation under the laws of Missouri?

A. Yes, sir.

Q. 8. And that company on its organization took over the Roberts, Johnson & Rand Company and the Peters Shoe Company?

A. Yes, sir.

Q. 9. Did the International Shoe Company of Missouri take over any other shoe concerns besides those two you have named?

A. The International Shoe Company of Missouri was formed from those two companies and later purchased the Friedman-Shelby Shoe Company.

Q. 10. What was the capital stock of the International Shoe Company, the Missouri corporation?

A. $25,000,000.

Q. 11. And the Missouri corporation continued in existence until what date?

A. Until March 16, 1921.

Q. 12. And then the International Shoe Company, the Delaware corporation, was organized?

A. Yes, sir.

Q. 13. What is the capital stock of the Delaware corporation?

A. The authorized capital stock is 250,000 shares of preferred stock of a par value of $100 per share; 1,400,000 shares of common stock without nominal or par value.

Q. 14. What is the actual paid in capital stock of the International Shoe Company at this time?

A. Our capital stock consists of an issue of 178,000 shares of preferred stock, 920,000 shares of common stock without par value.

Q. 15. In what business is the International Shoe Com-
[fol. 43] pany, the Delaware corporation, engaged?

A. The manufacture and distribution of a general line of footwear, with some tanneries in which is tanned leather for our own consumption only.

Q. 16. Does it own any shoe factories?

A. Yes, sir.

Q. 17. Where are the shoe factories of the International Shoe Company located?

A. In Missouri, Illinois, Kentucky, New Hampshire.

Q. 18. Does it own any tanneries?

A. Yes, sir.

Q. 19. Where are they located?

A. In Illinois, Pennsylvania and North Carolina.

Q. 20. Does it own and operate any stores or warehouses or branch houses for the sale of shoes?

A. It operates only in a wholesale way and has five distributing or selling branches in the city of St. Louis, one in Boston, Massachusetts and one in New York City.

Q. 21. What are the names of those branches or selling institutions in the city of St. Louis?

A. They are Roberts, Johnson & Rand; Peters; Friedman-Shelby; Continental, and Shoe Specialty.

Q. 22. What are the names of the organizations or selling branches in the other cities you have named?

A. Hutchinson-Winch of Boston; Morse & Rogers of New York City, and the Interstate with headquarters at Manchester, New Hampshire; also the Great Northern in Boston.

Q. 23. Are those selling agencies or organizations separate corporations?

A. No.

Q. 24. They are simply selling organizations maintained by the International Shoe Company for the distribution and sale of its products?

A. Yes, sir.

Q. 25. What kind and class of shoes does the International Shoe Company manufacture and sell?

A. A general line of shoes, including men's, women's, misses', children's work and dress shoes, that are distributed through five main branches or shipping houses, the five being the Roberts, Johnson & Rand; Peters; Friedman-Shelby; Morse & Rogers, and Hutchinson-Winch. The other distributing mediums mentioned above do not distribute a general line of shoes but are devoted to specialty features. The Great Northern is directed towards the sale [fol. 44] of men's fine or dress shoes only; the Interstate Shoe Company handling a very limited line of ladies' light dress shoes; and the Shoe Specialty of St. Louis being confined to another type of ladies' light dress shoes. I am drawing a distinction between the character of business done by Roberts, Johnson & Rand, for instance, and our Shoe Specialty, which is another branch here in St. Louis.

Q. 26. The International Shoe Company then after manufacturing its shoes does not sell directly to the customer or the retailer, but sells through its selling agencies; is that the manner of doing business?

A. I will answer your question "yes". The International Shoe Company as the International Shoe Company never bills any shoes. If those shoes come through Roberts, Johnson & Rand they would be billed by Roberts, Johnson & Rand branch of the International Shoe Company. That is clearly set out on our billheads.

Q. 27. And that is true of all of the other selling organizations, is it, Mr. Rand?

A. That is true of all the other selling organizations.

Q. 28. The selling organizations you have mentioned are simply agencies of the International Shoe Company for the sale of its products?

A. Yes; the International Shoe Company has very definitely constituted all those several sales branches that I have mentioned.

Q. 29. What disposition is made of its products by the International Shoe Company?

A. They are sold in their entirety to retail merchants.

Q. 30. Where are those retail merchants located?

A. All over the United States, with some sales in various foreign countries; but the exportation of shoes of the United States has been materially lessened since the war.

Q. 31. The International Shoe Company then sells its products in practically all of the States of the United States?

A. In all of the states; yes, sir.

Q. 32. And ships the products it manufactures from its factories and selling agencies and warehouses to the customers in all of the States of the United States?

[fol. 45] A. With one correction: It ships no merchandise from any of its western factories direct to the merchants; they come to the branch and are billed and shipped out from there; and the reason for that is that it would be possible for a merchant buying 40 dozen shoes from Roberts, Johnson & Rand to have each dozen coming from a different factory. Our factories are highly specialized in an attempt to create economies of production, and that necessitates them being assembled at a given point so that shipments may be made all together and not take forty shipments on one order.

Q. 33. Mr. Rand, what are the factories which you call the western factories?

A. Those around in the central west as distinguished from those factories located in New Hampshire.

Q. 34. And the shoes manufactured at those factories are sent to what distributing points?

A. They are handled in the same way, with the exception of the shoes sold by the Great Northern and the Interstate, and those shoes are made not under our name but are generally made under the name of the merchant who buys them; and when made they go directly from the factory to the merchant who has bought them.

Q. 35. Is St. Louis the chief assembly point of all of the products of the International Shoe Company?

A. It is the chief assembly point; but the business done in Boston by Hutchinson-Winch and in New York by Morse & Rogers is handled in a way similar to that in St. Louis.

Q. 36. The product thus assembled at St. Louis, and manufactured by the International Shoe Company, is shipped to the various States of the United States to the several purchasers?

A. Yes, sir.

Q. 37. Is the International Shoe Company in competition with any other concerns engaged in like business?

A. In very active competition with some fifteen hundred other shoe manufacturers of the United States.

Q. 38. And are they also engaged in interstate business, in shipping shoes to purchasers in various states?

A. Yes; very actively.

[fol. 46] Q. 39. How does the International Shoe Company rank in production, output and sales with other shoe manufacturing concerns in the United States?

A. It is the largest.

Q. 40. Larger than any other single shoe manufacturer?

A. Yes, sir.

Q. 41. What was the W. H. McElwain Company?

A. W. H. McElwain & Co. was a shoe company organized under the laws of the State of Massachusetts, and had been in business, I think, since around 1896 or 1898.

Q. 42. And it was or is a corporation under the laws of the State of Massachusetts?

A. Yes, sir.

Q. 43. Do you know the amount of its capital stock on May 11, 1921?

A. 71,400 shares first preferred of $100 par value, of which 1,419 were in the treasury and not outstanding at the time; second preferred, 54,000 shares of par value of $50, of which 2,000 were in the treasury; 70,000 shares of common stock of $50 par value, of which 104 shares were in the treasury.

Q. 44. Are you acquainted with the business and operations of the W. H. McElwain Company prior to May 1911?

A. In a general way I feel I had a very clear conception of their character of business.

Q. 45. What was the business in which the W. H. McElwain Company was engaged?

A. They were engaged in the manufacture and distribution of men's shoes only, designed for sale and distribution to merchants in large cities.

Q. 46. Did it have any shoe factories?

A. Yes, sir.

Q. 47. Where were they located?

A. In the State of New Hampshire.

Q. 48. Had only one shoe factory?

A. No; they had several shoe factories.

Q. 49. Where were they located?

A. They were located at Manchester.

Q. 50. What state?

A. New Hampshire; Nashua, New Hampshire; Newport, New Hampshire; Claremont, New Hampshire; and Keene, New Hampshire; with a total output estimated about 40,000 pairs per day.

[fol. 47] Q. 51. Did it own any tanneries?

A. Yes, sir.

Q. 52. Where were they located?

A. They had a tannery located at Merrimack, New Hampshire. They had another tannery located at Manchester, New Hampshire.

Q. 53. Did they own and operate any selling organizations, separate and distinct organizations from the W. H. McElwain Company?

A. They had some selling branches with relations toward the McElwain Company different from those I have de-

scribed in the International's business. Those branches were located at Boston under the name of McElwain-Hutchinson-Winch; at New York under McElwain-Morris & Rogers; at Kansas City under McElwain Barton; at Columbus, Ohio, under McElwain Columbus Company; at Chicago under the name McElwain-Chicago Company; at San Francisco under the McElwain-Young Shoe Company. They also operated the Great Northern Shoe Company in a way similar to the way we are now operating it.

Q. 54. What business was carried on at the branch establishments you have just mentioned by the W. H. McElwain Company?

A. The distribution at these sales branches of a general line of shoes, those branches being owned partially by the McElwain Company and in connection with the local partners who were running the business, and those local partners were buying shoes other than the limited line manufactured and supplied by the McElwain Company.

Q. 55. What line of shoes was made by the W. H. McElwain Company and shipped by it to these selling agencies you have mentioned?

A. A line limited to men's light dress shoes, the word light being used to distinguish between heavy work shoes and the lighter shoe that is worn on city streets.

Q. 56. The W. H. McElwain Company made no shoes except that kind you have mentioned?

A. No, sir.

Q. 57. And for men only?

A. For men only.

Q. 58. Made no shoes for women or girls or boys?

A. They had not made any shoes for women or for girls with the exception an attempt had been made—a very limited attempt continuing only a few months, so far as I know. They were never known as makers of anything [fol. 48] other than these shoes. I do not recall ever having seen a woman's shoe they produced, although I think they had produced a few.

Q. 59. The selling agencies you have just mentioned distributed or sold to the trade shoes manufactured by W. H. McElwain Company as well as shoes manufactured by other shoe manufacturers, did they?

A. Yes, sir.

Q. 60. And the shoes manufactured by W. H. McElwain Company were distributed and sold to purchasers in the various sections and the surrounding sections to these selling agencies you have mentioned?

A. The area covered by those selling agencies was a very limited area—I am thinking now of McElwain-Morse & Rogers, for instance, located in New York City. They did not cover this section of the country.

Q. 61. I mean in what territory did they sell shoes manufactured by W. H. McElwain & Co.?

A. Along the Atlantic coast and in the immediate vicinity of Boston very largely.

Q. 62. How far south did they extend in that business?

A. Well, they extended as far as Louisiana, or along the coast, but they did not get into the interior in any perceptible way. The trade seemed to have been built up along the coast on account of the water freight rate.

Q. 63. They had seeling agencies in Columbus, Ohio, and in San Francisco, did they?

A. Yes,—the Columbus, Ohio, radius being a very small radius.

Q. 64. In what states did the Columbus, Ohio, agency dispose of its products?

A. I cannot answer that definitely.

Q. 65. Can you tell about the San Francisco agency?

A. I think it will apply to all of these several branches that they did not go beyond the limitations of the immediate surrounding states in any substantial way.

Q. 66. But they did sell into the various other states surrounding each selling agencies?

A. Yes, in a limited way.

Q. 67. And at the same time that W. H. McElwain Company was selling its shoes in the various states of the United States was the International Shoe Company also selling [fol. 49] shoes manufactured by it into those various states?

A. Yes, but I think I may clarify it to some extent; Morse & Rogers were not selling exclusively McElwain shoes, which I think might be implied by your question. To my best knowledge—the best information I have—approximately thirty per cent of their merchandise was McElwain's products and the other shoes were bought from various manufacturers and were simply jobbed.

Q. 68. They simply did not confine their business to the shoes of the McElwain Company?

A. No; although the McElwain Company was a partner in the company.

Q. 69. But they did handle and sell and distribute the W. H. McElwain Company product?

A. Yes, along with these others.

Q. 70. When did the International Shoe Company acquire the capital stock or share capital of the W. H. McElwain Company?

A. In May, 1921 we contracted to buy the shares of the McElwain Company through the acquisition of all of the share capital outstanding at that time.

Q. 71. And did the International Shoe Company buy all the outstanding share capital of the W. H. McElwain Company in May, 1921?

A. We contracted to buy it all and had an agreement with the officers of the McElwain Company that they would guarantee to deliver all of the shares of the company.

Q. 72. When did the International Shoe Company actually acquire the capital stock of the W. H. McElwain Company?

A. At that time and as rapidly as it was possible to acquire it thereafter. It ran along for twelve or fifteen months, when the International's offer was outstanding to take in this stock or to purchase this stock when offered by the holders of the stock; and it was finally acquired in its entirety with the exception of about twenty-one shares of the first preferred stock which has not yet been turned in.

Q. 73. When did the International Shoe Company take over the actual management of the business of the W. H. McElwain Company?

A. At the time I mentioned, in May, 1921, after having reached the agreement to do so; we then began actively to [fol. 50] participate in and help direct the management of the McElwain Company.

Q. 74. And the International Shoe Company did actually manage and direct it?

A. Yes, sir.

Q. 75. Until it disposed of its interests?

A. Yes, sir.

Q. 76. What change in the organization or management of the W. H. McElwain Company was brought about by the International Shoe Company after it acquird the capital stock of the W. H. McElwain Company?

A. The McElwain Company, prior to 1921, was doing business in not less than case lots. It was selling a good many jobbers. It was manufacturing only men's shoes, and there were used in the construction of those shoes substitutes for leather, such as leather board. They were selling their products to merchants in the large cities. They were manufacturing shoes under the names of the merchants who bought them and they were supplying these several jobbing houses or branches in which they had an interest. After the acquisition of the properties of the McElwain Company the International Shoe Company attempted to operate the company, the new part of our business, along the lines we had experience in, in distributing those shoes over a wider field to smaller merchants in smaller towns, the shoes to be made under the trade name of the several branches of the International Shoe Company, as we then conceived it; maintaining the Great Northern Shoe Company, which does operate in a direct way; making shoes for retailers in large cities under the name of the retailers; but eliminating entirely from the construction of these shoes any substitutes for leather of any kind and making them out of solid leather, in accordance with the custom we had established in St. Louis through a number of years. We converted some of those men's factories into factories producing women's shoes, others into factories producing girls' shoes, making a line of shoes, a general line of lighter grades rather than the limited line of men's light shoes. At the time that the factories wee acquired by the company——

Q. 77. I am not speaking about the acquisition of the fac- [fol. 51] tories; I am speaking of the acquisition of the capital stock.

A. When we came into the management of the company then.

Q. 78. Confine it to the acquisition of the stock; during the period the International Shoe Company owned the stock of the McElwain Company.

A. In May, 1921 the International Shoe Company was largely oversold. Our volume of orders was in excess of the ability to produce shoes. The condition was just the reverse with McElwain Company; their capacity of production was largely in excess of their sales. They had suffered, and were suffering, from large cancellations of orders that had been secured at considerable expense; they owed a good deal of money, and they had on hand at their various branches of distributing points an excessive amount of manufactured merchandise which was not only not moving but was being supplemented by a good many returns of merchandise that had been shipped. We needed the shoes that might come out of those factories; and immediately after we acquired the business we gave to them large orders and continued to give them large orders, and the factories began to operate largely and the production of shoes made shipped to St. Louis and distributed to the customers that we had sold.

Q. 79. You say in May, 1921 the International Shoe Company was largely oversold?

A. Yes, sir.

Q. 80. You had a demand for your products and you could not fill all of it?

A. We could not fill it. We were not filling it in a way that was satisfactory to ourselves and our customers.

Q. 81. Is that one of the reasons why the International Shoe Company acquired the stock of the McElwain Company?

A. That is one of the substantial reasons.

Q. 82. And the principal reason, no doubt, in order to supply your own trade and the demand you had?

A. I do not know it was the principal reason; it was a substantial reason.

Q. 83. It was one of the substantial reasons?

A. Yes, sir.

Q. 84. And the International Shoe Company, in other words, needed the shoes produced by the W. H. McElwain Company, and which it could produce, in the business of the International Shoe Company?

A. They had this virtue: that they had an estimated ca- [fol. 52] pacity of some 40,000 pairs of shoes per day. We were building factories in this community constantly, with

this experience: that, having built the factory, we not only had to put up the building and put the equipment in there, but we then had to educate all of the help; and it was a question of more than money; it was a question of time. Our experience has taught us that if we build a factory, or begin building a factory, at any time, it will be approximately two and a half or three years before that factory can come up to an orderly process of production and realizing from the factory shoes of acceptable quality and proper production in volume. We had enjoyed, and I hope do enjoy, the confidence of some eighty thousand customers, and our shoes were in good demand, because they had been manufactured under sound principles of economy and had been similarly distributed. As I previously stated, we were oversold, to good reliable merchants. We had hopes that that condition might continue, and it would take several years for us to build up by the method I have previously described the factories necessary to take care of sales in excess of our then production; so that the actual need of additional shoes served as one of the substantial factors in this trade.

Q. 85. You say at the time the International Shoe Company acquired the stock of W. H. McElwain Company that the W. H. McElwain Company had a large volume of shoes in its warehouses and selling agencies throughout the country?

A. Yes, sir.

Q. 86. And I believe you also said that supply on hand was constantly increasing?

A. It was not being properly diminished. They were making some shoes but producing nothing like forty thousand pair. Some of the factories were shut down and others were slowed down to the minimum.

Q. 87. And their output of shoes was not moving out to the trade, properly, at least?

A. And some were being returned because they had been sold at rather high prices and the market was radically declining at the time.

Q. 88. That was rather an unusual situation in business at that time, wasn't it?

A. A very critical period.

Q. 89. The International Shoe Company was standing in [fol. 53] a good position because it was largely oversold?

A. It was oversold; and for a year's time we had watched our stocks very carefully and we were in a healthy, strong position because of some good luck and some forethought. I do not know which was predominant.

Q. 90. Possibly some of both?

A. I think so.

Q. 91. After the International Shoe Company acquired the stock of the W. H. McElwain Company what disposition did the International Shoe Company make of the shoes accumulated in the warehouses and selling agencies you have just mentioned?

A. In all instances the several distributing branches were either sold to the parties who were operating them or closed.

Q. 92. And what disposition did the International Shoe Company make of the shoes on hand?

A. At the Chicago office we attempted to sell those shoes from Chicago as rapidly as we could, and after having moved a considerable amount of them we shipped the balance of them to St. Louis and distributed them from here.

Q. 93. From your selling agencies here, or from the selling agencies of the International Shoe Company?

A. With the consent of our customers we applied some of the shoes to the excess amount of orlers we had, and we distributed those shoes among our several branches here in St. Louis, and gave samples of them to our salesmen and sold the shoes on their merits, explaining in all instances to our customers the method of construction of those shoes, that they were different from ours.

Q. 94. In other words, you sold these shoes manufactured by the W. H. McElwain Company to the regular customers of the International Company, but always with full explanation of their origin?

A. Just what they were.

Q. 95. And those shoes owned by the W. H. McElwain Company at the time this stock was acquired by the Internal Shoe Company were distributed, to a large extent at least, to the regular customers of the International Shoe Company?

A. Not taken as a whole, because I only cited one instance——

Q. 96. I did not say as a whole; I said to a large extent.

A. I think it was not to a large extent, because Fisher & [fol. 54] Company—by the way I failed to mention them as one of McElwain's branches in New York City—the Fisher Company was sold to the Fishers and has continued operation under their management.

Q. 97. Who sold it to the Fishers?

A. The McElwain Company.

Q. 98. After the stock was acquired by the International Shoe Company?

A. After the stock was acquired by the International Shoe Company.

Q. 99. The International Shoe Company through its ownership of the stock disposed of the Fisher agency in New York City as a part of the business of the W. H. McElwain Company?

A. Technically, the McElwain Company sold it. I am trying to make this clear: McElwain Company sold that, although we controlled the McElwain Company. They also sold the McElwain-Barton Company at Kansas City to the Barton-Wheeler Shoe Company. We disposed of them and sold those two branches in that way.

Q. 100. What about the one at Columbus?

A. The Columbus branch was handled similarly to Chicago. We sold from the Columbus branch as many of those as we could economically and quickly, and it was only a small branch anyhow, and the shoes that had not been moved out were shipped from Columbus to New York and distributed through Morse & Rogers.

Q. 101. That is the selling agency of the W. H. McElwain Company, is it, Mr. Rand?

A. Yes, sir.

Q. 102. And now the selling agency of the International Shoe Company?

A. The McElwain-Young Company of San Francisco was handled in somewhat the same way. A good many of the shoes were sold out in the regular way and then were finally closed out in their entirety; so if you take all of the several branches together the shoes were not sold in a large way through the St. Louis branches. That is the reason I answered negatively. It was a comparatively small way.

Q. 103. And it was in May, 1921, that the International Shoe Company acquired a part at least of the stock of the W. H. McElwain Company and through that stock ownership assumed control and direction of the W. H. McElwain Company, was it?

A. Yes, sir.

[fol. 55] Q. 104. Subsequent to May, 1921, the International Shoe Company acquired other portions of the stock of the W. H. McElwain Company until they had finally acquired practically all of it?

A. Yes, sir.

Q. 105. How long or what length of time did the International Shoe Company own the capital stock of the W. H. McElwain company?

Examiner Bennett: If you have any papers that will refresh your memory, it is perfectly proper to refer to them.

A. Until June, 1923.

Q. 106. You signed the answer made in this proceeding by the International Shoe Company, did you not?

A. Yes. This is my signature.

Q. 107. And, of course, you were authorized to do that as president of the International Shoe Company?

A. Yes, sir.

Q. 108. At the time the complaint was issued in this proceeding by the Federal Trade Commission, namely, in May, 1923, the International Shoe Company owned practically all of the stock of the W. H. McElwain Company, did it?

A. Yes, sir.

Q. 109. And it was subsequent to the time when the complaint was issued in this case that the International Shoe Company disposed of its stock or the stock it held of the W. H. McElwain Company?

A. Yes, sir.

Q. 110. What date do you say it is when that stock was disposed of by the International Shoe Company?

A. Between the 1st and 15th of June, 1923.

Q. 111. Who got it—to whom was that stock disposed of by the International Shoe Company?

A. It was sold to the Bennett, Limited, and was not disposed of by the International Shoe Company but was later authorized by the International Shoe Company. The stock

was disposed of by Mr. King, who represented McElwain & Company. I had been elected president of the McElwain Company, and after we had notice of the complaint of the Federal Trade Commission I immediately resigned from the presidency of the McElwain Company, and we were very earnestly trying to seek a way by which we could meet [fol. 56] the views—technical views as we saw them—of the Federal Trade Commission by divesting ourselves of the stock we had acquired.

Q. 112. To whom did you dispose of that stock?

A. To the Bennett, Limited.

Q. 113. What is the Bennett, Limited?

A. It is a Canadian company.

Q. 114. A Canadian corporation, or what we know as a corporation?

A. Yes; a corporation of which I have no personal knowledge. I have no first-hand knowledge about the company.

Q. 115. Your transactions with the company then were simply confined to the formal matters in connection with the transfer to them of the stock of the W. H. McElwain Company?

A. The facts are I never had any transaction, directly or indirectly, with the company, except I participated in an authorization and approval of transactions that had been carried out through Mr. Stanley King.

Q. 116. Who was Mr. Stanley King representing?

A. The McElwain Company.

Q. 117. Was he an employee of the W. H. McElwain Company?

A. Yes, sir.

Q. 118. And in the disposition of that stock was he acting for the International Shoe Company in any respect?

A. It resulted in his acting for the International Shoe Company, but Mr. King's negotiations were started and conditionally concluded before I knew anything about it, or had ever heard of it.

Q. 119. Was he an officer or agent of the W. H. McElwain Company?

A. Yes, he was vice-president of the W. H. McElwain Company.

Q. 120. Was he vice-president of the W. H. McElwain Company as a representative of the International Shoe Company?

A. No; he had been a vice-president for years, with one intermission, when he resigned from the W. H. McElwain Company when he undertook war service at Washington; and after the war he went back to the company and became vice-president of the company.

I would like to correct my testimony. Mr. King had been vice-president of the McElwain Company and had resigned [fol. 57] from the company about the time I had resigned as president of the company, and after getting the complaint from the Federal Trade Commission we were considerably disturbed about a situation that was presented by the commission that was wholly unexpected, and we were earnestly seeking a proper procedure to answer in the right way a complaint made by the commission. Prior to and at the same time that Mr. King was negotiating we had tried to develop several plans by which the International Shoe Company could divest itself of the stock it had acquired of the McElwain Company. We thought we had worked out a trade, a sale of all of the stock we owned, through a New York banker, and the trade had been practically consummated, until the banker took it up with his attorney, and he was unable to buy this stock of the McElwain Company unless we had a collateral agreement to repurchase the assets of the company from him. That stopped the negotiations. Mr. Blake, here, made a trip to New York and in connection with Mr. King was trying to work out this trade that I have described. The banker's attorney made the objections that I have mentioned, and they declined to go farther with it; and Mr. Blake returned to St. Louis and Mr. King went back to Boston. There had been a very earnest conference between Mr. Blake, Mr. Johnson, chairman of the board, and myself. Neither Mr. Johnson -or I are lawyers, but we felt there was a proper way to get at this matter, and we then, in conference with Mr. Blake, took the position that we were never interested in the stock, and at that time did not even know where it was—we had never had anything in our minds but the acquisition of the properties of the McElwain Company, and our original contract will bear that out. We had no purpose other than to secure the properties of the company. We did not care anything about the stock then or now, and that there was but one way to meet the views of

the Federal trade Commission, we would liquidate the McElwain Company and take all of the stock of the company, burn it up or give it away, or do anything that may be proper or straightforward in the matter, as we have no interest in it. We had contracted to buy every share of it, not with any idea of control except to control the proper- [fol. 58] ties. We agreed on that plan. Mr. Blake then left St. Louis and went to Boston to work that plan out with Mr. King. There was one danger attached to that plan. There were at that time some sixty to a hundred shares of the stock that had not been turned in and to cancel all of the stock would then leave these sixty holdouts in possession of the McElwain Company, and we did not want to take a procedure that would divest us of the properties of the McElwain Company.

We asked Mr. Blake to work this plan out with Mr. King; and he went to Boston with a determination to do that under the result of the conference between him and Mr. Johnson and myself, although I think from a legal standpoint Mr. Blake looked at it differently from the way Mr. Johnson and I looked at it.

Q. 121. Please continue your recital of the negotiations which led to the disposition of the stock of the W. H. McElwain Company which was owned by the International Shoe Company.

A. When he got to Boston with the plans in mind that the three of us had worked out here at St. Louis, that is, Mr. Johnson, Mr. Blake and myself, the time had elapsed that it took him to get from here to Boston, and whether he was in Boston one day or two days I do not know—now confining myself only to what I do know—I had a long distance telephone call from Mr. King saying that he had an unsolicited offer for the purchase of the McElwain stock, and that he had been discussing it with Mr. Blake, and that he wanted to follow out that plan rather than the one that Mr. Blake, Mr. Johnson and I had agreed on before Mr. Blake left St. Louis. I asked him over the phone if Mr. Blake concurred in his then suggested plan, and I might have asked him, and possibly did, what was the plan, and he said he had an offer from the Bennett, Limited, to purchase the stock; and up to that time I had never heard of Bennett, Limited; and I said to him that we felt that the

plan we had worked on here was the only practical business plan that we knew anything about, and asked him if Mr. Blake concurred with him in the plan he was suggesting to me. He said that Mr. Blake did concur with him; to which I replied that we were twelve hundred miles from the scene [fol. 59] of action, and we could not thrash out details over the telephone, and if he and Mr. Blake were in agreement, to go ahead with the plans they had then in mind and work them out. That was my last contact with that trade until the trade had been worked out and come back to us in definite form and was subject to approval here, until it was approved.

Q. 122. And carried through?

A. And carried through.

Q. 123. When the complaint was issued in this case against the International Shoe Company all the stock of the W. H. McElwain Company, except a few shares you have mentioned, was owned by the International Shoe Company, wasn't it?

A. It was not technically owned by the International Shoe Company but had been paid for by the International Shoe Company. We, of course, did not have the stock in the name of the International Shoe Company. We did not own the stock, although we had paid for it—I am now speaking technically.

Q. 124. It was not registered on the books of the company in the name of the International Shoe Company?

A. It was not.

Q. 125. It was registered in the names of certain individuals, among them being Mr. Stanley King?

A. Yes, sir.

Q. 126. And it was registered in the names of individuals designated by the International Shoe Company?

A. That is correct.

Q. 127. So the International Shoe Company had paid for the stock of the W. H. McElwain Company but on the books of the McElwain Company it was registered in the names of certain individuals?

A. That is correct.

Q. 128. You stated, I believe, that your first purpose, or the first purpose of the International Shoe Company, was not necessarily to acquire the stock of the W. H. McElwain

Company, but the property, assets and factories and the like owned by it?

A. Yes; I stated that was our first and last purpose, and continuous purpose.

Q. 129. Of course, the idea the International Shoe Company had was to acquire the factories, plants and the facilities owned by the W. H. McElwain Company, to help the [fol. 60] International Shoe Company in the shoe business, wasn't it?

A. Yes; and incidentally to help the McElwain Company.

Q. 130. So, in pursuance of that method or desire to acquire the plants, assets and properties, the control of this stock of the W. H. McElwain Company was bought as you have outlined?

A. That is correct; and if I may add, colonel, it presented to us, as we saw it, the only method by which we could secure the physical properties of the McElwain Company.

Q. 131. The only method offered to you was to acquire the stock of the W. H. McElwain Company?

A. That is not true. There was another method offered to us, but the consequence of it was such that we refused it.

Q. 132. I understood you to say that was the plan by which you could do that.

A. I probably was not clear in my own statement. That was the only workable method—I will qualify it that way—by which we could secure those properties; and you might be interested in the explanation——

Q. 133. [Interrupting.] No, I would not care for it right at this time. The feasible plan offered to you to carry out the purpose of the International Shoe Company was to acquire the stock of the W. H. McElwain Company; that is what you considered the feasible, workable plan?

A. Yes, the only plan open to us as we saw it, by which we could acquire the properties, was through the acquisition of the stock of the company.

Q. 134. And the stock was acquired?

A. Yes; as I have previously explained.

Q. 135. After the complaint was issued in this proceeding by the Federal Trade Commission it was then that you and other officers of the International Shoe Company discussed the plan of divesting themselves of the stock of the W. H.

McElwain Company, but retaining the assets, properties and plants?

A. Yes, but solely because of the complaint of the Federal Trade Commission; and it broke up a plan that we had in mind of destroying the stock or cancelling or making no use of it whatever. We had never in all of our conferences—and this was a critical time at which we were acting, and acting in haste—but even following that we had never [fol. 61] given a moment's consideration to the stock or what should be done with it. We had never regarded it in any way. I think that is a fair, broad statement, that the officers of the International Shoe Company did not even know where the stock was; we had held it in such little regard. We felt it was in clean, safe hands, but we never had any intention of making any use, directly or indirectly, of the stock of the McElwain Company, although we were using very actively the properties which we had acquired through the ownership of the stock—we were using actively the properties the ownership of which was vested in these stock certificates.

Q. 136. You were, as you stated at first, simply interested in the plants, properties and assets?

A. Solely.

Q. 137. And in order to control them or manage them or get the benefit of them the stock of the W. H. McElwain Company was acquired?

A. Yes, that is true; but we had one further interest that made me qualify the statement about the only method by which we could acquire the properties: We were interested in a group of men, the standing organization of the McElwain Company, and without the acquisition of the stock the financial conditions of McElwain Company were such that had we accepted the offer to buy directly for cash the physical properties, we would then have gotten the physical properties of the company with all of the officers and directors and active management of that business absolutely broke, without a dollar for the returns of work of fifteen of twenty years in the company. I am now speaking from a business standpoint. We would not have had those properties with all of the management and everyone gone, because we could not run it twelve hundred miles from St. Louis, with the personnel broken down, hopeless, and with

new men—we did not have a surplus of men in our organization here in St. Louis to go down and direct the manufacture and distribution of 40,000 pairs of shoes additional. We needed help. We needed intelligent, loyal help; and that was the one reason why we positively declined, at any price, to buy for cash the physical assets of the company and disregard the entire organization.

[fol. 62] Q. 138. You wanted to take over the personnel with the property?

A. We wanted to take over the personnel, and some altruistic motives entered into that consideration. They had not been as fortunate as we had under trying conditions. We were trying to save, and in saving the organization for the International Shoe Company we had a further and bigger purpose of saving something for a group of fine men, that we had known very pleasantly for years, and not have the whole crowd and group turned out dead broke, without a single cent as represented by the McElwain Company.

Q. 139. As I understand you, then, one of the reasons which determined you and others rpresenting the International Shoe Company in this transaction was to save something to the officers and directors or certain stockholders of the W. H. McElwain Company as well as to secure for the International Shoe Company the benefit of the service and experience of those men?

A. Yes, and the further purpose that was discussed some time—and I do not want to press too far on the altruistic side of it, but we were very conscious of the critical financial condition of the whole shoe industry, and here was a company that had had some twenty-five years experience and good standing, and had enjoyed the confidence of all of New England, and had between six and seven thousand stockholders. They were one of the largest shoe manufacturing institutions in the east, and with fifteen or twenty connections, as I see it, as many banking connections as they could establish at the time, because they were in bad financial condition. We were trying, with something of an e-lightened selfishness, to keep down a condition in the shoe industry that might come back and break down the strong position in which we found ourselves. I am not making the point that these were the controlling factors, but they were part of it. There was no one thing that was the reason why we made this trade. There were several factors that were strongly

influencing factors: They were the necessity of the International Shoe Company for more shoes, the desire to help, we hoped, without great cost to ourselves, some men with whom we were very friendly, the desire to extend our busi- [fol. 63] ness into a trade zone that we had never touched, the hope that we might get into some larger cities which the International Shoe Company had never worked to any extent; with the further hope that we might prevent and stay a tendency towards panic that was all over the country in 1921, and in the long run that we might work out, advantageously to ourselves and to the consuming public, problems in our business, that we might work them out in a correct and proper and economical way.

Our company has never tried, in this case or any other case, to buy out a competitor, and has never opened up the subject of any kind of a merger, directly or indirecty, except the merger, which is the only merger, between the Roberts, Johnson & Rand and the Peters Shoe Companies. Of course, the International Shoe Company did not do that because they were not in existence.

Q. 140. After the complaint had been issued and served on the International Shoe Company in this proceeding, it was then that you had the conference you mentioned a few moments ago between yourself and Mr. Johnson and Mr. Blake, I believe you said it was?

A. We had a conference also with Mr. King—I answer "yes" to that question.

Q. 141. It was, as I understand it, in that conference determined that the purpose of the International Shoe Company would be to meet, if possible, the views of the Federal Trade Commission in reference to the capital stock of the W. H. McElwain Company provided the International Shoe Company could retain the properties and assets of the plants of the W. H. McElwain Company.

A. I do not think that was ever discussed, colonel, from the standpoint—we never thought there was any question about the maintenance of the property of the company, based on a ruling of the Federal Trade Commission that the acquisition of the properties of the company was not in any technical violation of any laws, and we were trying to meet the specific complaint made about the acquisition of the stock of the company, and we never had any regard for the stock of the company, and we were simply trying, as best

[fol. 64] we could, to meet what we considered a technical objection——

Q. 142. In reference to the stock?

A. —in reference to the stock, and, of course, we did not feel that the commission was correct in that because all of use were conscious of an entirely different purpose—just as actively conscious as a group of men could be.

Q. 143. So the conclusion was then, as I understand it, that there being technical objections to the acquisition and ownership by the International Shoe Company of the capital stock of the W. H. McElwain Company, the International Shoe Company would divest itself of that stock and retain the things in which it was interested, namely, the plants, properties and assets of the W. H. McElwain Company?

A. Yes, sir.

Q. 144. And it was with that idea in mind that your conferences were had and your negotiations begun?

A. Yes; and particularly the conference between Mr. Blake, Mr. Johnson and myself in which we took the position we did not care anything about the stock; we will give it to the commission of they want it; let's burn the stock up—provided we could retain the only thing which we ever had any interest in.

Q. 145. Which was?

A. Physical assets and the organization.

Q. 146. And if you could devise a method by which that could be accomplished——

A. That would meet the views of the Federal Trade Commission, we felt that, and we hoped that we might have the thing stopped at that point and no proceeding continued.

Q. 147. And that was the plan you were simply trying to work out?

A. That was the plan we were simply trying to work out, and the plan that we agreed on most positively—I am trying now to just express the determined expression of Mr. Johnson and myself, that we will get right at the heart of this thing, without any circumlocution or indirection, and if we have to go before the Federal Trade Commission we will say to them: "We never had any interest in the stock and we took all this stock and burned it up and cancelled it."

The only deterrent from that point at all was the thing I [fol. 65] previously mentioned, that we would have hesitated to have done such a thing and then have the holders

of thirty-five shares of the stock then own the McElwain Company and come in with a claim against all of its assets.

Q. 148. Only a small minority of the stock of the McElwain Company was held by the original owners and not acquired by the International Shoe Company, and they were the ones that would probably cause trouble?

A. In handling those outstanding stockholders a spirit of fairness was worked out. We had a given time under which the holders of the McElwain stock might exchange their McElwain stock for International Shoe Company stock, and some of these recalcitrant stockholders did not turn it in; and we extended that option and Mr. King saw a good many of them; I saw some of them and explained fully and clearly what we were trying to do and most of all them turned in their stock, to their advantage—very much to their advantage—and that option was extended some six months after the date set up, whereas the development of the company—the financial development I am speaking about, showed that the stockholders in the McElwain Company, the common stockholders would have gotten nothing, and even under our management the preferred stockholders would have gotten very much less than we offered them, and I might say, in my judgment, that under a liquidation, which was imminent, that I seriously questioned whether the first preferred stockholders would realize as much as twenty dollars a share out of their holdings.

Q. 149. How many of these objecting stockholders were there owning stock in the W. H. McElwain Company at the time the complaint was issued in this proceeding?

A. I think there were no objecting stockholders; they were just inactive stockholders; just sitting tight, that is all.

Q. 150. How many were there of the "sitting tight" stockholders?

A. Six or eight individuals.

Q. 151. Holding how much stock?

A. About fifty to sixty shares.

[fol. 66] Q. 152. It was a very small part of the stock of the W. H. McElwain Company?

A. Yes, exceedingly small.

Q. 153. What was the result of the plan finally worked out in reference to the capital stock of the W. H. McElwain

Company? In other words I mean this: What was the plan in reference to the disposition of the International Shoe Company of the stock of the W. H. McElwain Company?

A. The plan as worked out by Mr. King.

Q. 154. Yes; or rather the plan as adopted and complied with by the International Shoe Company?

A. The stock of the McElwain Company was sold to Bennett, Limited.

Q. 155. How much stock was sold to the Bennett, Limited?

A. Every share that had been turned in by the original stockholders.

Q. 156. And controlled by the International Shoe Company?

A. Yes, sir.

Q. 157. Do you know the amount for which that stock was sold to the Bennett, Limited?

A. That is a matter of record; if I can refer to our minutes——

Q. 158. That is all right; refer to your minutes.

A. $4,061,094.14.

Q. 159. Was that amount paid to the International Shoe Company by the Bennett, Limited?

A. Yes, sir.

Q. 160. And that was for the stock of the McElwain Company owned by the International Shoe Company?

A. Yes, sir.

Q. 161. What was the next transaction between the International Shoe Company and the Bennett, Limited?

A. I have no personal knowledge of the next transaction, except in the final consummation of it.

Q. 162. What was the next transaction so far as your knowledge goes, Mr. Rand?

A. I participated in endorsing the purchase of the assets of the McElwain Company from the Bennett, Limited.

Q. 163. You say you participated in that; you participated how?

A. By endorsing and approving the purchase of those assets.

Q. 164. By whom?

A. By the International Shoe Company.

[fol. 67] Q. 165. You mean you participated as an officer and stockholder of the International Shoe Company?

A. Yes, sir.

Q. 166. Then the plants and properties of the W. H. McElwain Company were purchased by the International Shoe Company, were they?

A. Yes, sir.

Q. 167. Did that include all plants, properties and assets?

A. Yes, sir.

Q. 168. Everything they owned?

A. Yes, sir.

Q. 169. So far as you know?

A. So far as I know.

Q. 170. How was that transferred or conveyed to the International Shoe Company?

A. I cannot answer that.

Q. 171. Do you know whether by written instruments or deeds, or anything like that?

A. I am not hesitating on answering, except that that was done, and our records, which we will supply you, will show all of those transactions, but step by step it is not clear to me.

Q. 172. Do you know just what amount was paid to the W. H. McElwain Company by the International Shoe Company for the plants, properties and assets of the W. H. McElwain Company?

A. I can give you that accurately. $4,063,125.89.

Q. 173. That amount was paid by the International Shoe Company?

A. Yes, sir.

Q. 174. And since that time the International Shoe Company has owned, and now owns, the plants, properties and assets acquired from the W. H. McElwain Company?

A. Yes, sir.

Q. 175. And that, as you have stated, was what the International Shoe Company had always been interested in acquiring?

A. Very definitely, yes, and the only thing they were interested in acquiring.

Q. 176. And that property so conveyed is now the property of the International Shoe Company and used by it in its shoe manufacturing and sales business?

A. General operation; yes.

Q. 177. And by these transactions you have mentioned with the Bennett, Limited, and with the W. H. McElwain Company, the International Shoe Company has attempted [fol. 68] to meet the legal situation in reference to the acquisition of the stock, has attempted to divest itself of it?

A. It has divested itself of it.

Q. 178. And put it in a position where it thinks it is not holding it in violation of the law?

A. That is true, both in letter and in spirit.

Q. 179. And retaining at the time the properties, assets and plants in which the International Shoe Company was interested?

A. Yes, and which we feel we have an absolute right to do under the ruling of the Federal Trade Commission.

Q. 180. The transactions with the Bennett, Limited, and with the W. H. McElwain Company were simply an effort of the International Shoe Company to meet that situation, divest itself of any stock it may have held or owned contrary to law and yet retain the property which it wanted and needed in its business; isn't that true?

A. I think that is true. It would have never come up if the Federal Trade Commission hadn't made this complaint. We would have taken the stock and burned it up.

Q. 181. These transactions which you have just mentioned, you say, would not have been necessary or brought about except for the complaint in this case?

A. I think not. I am only making the point that the stock would never have been bought or sold or used in any way. That it probably would have been filed away just to keep a record of the transactions of the business, but it would have been cancelled because we expected to own every share of it and make a bookkeeping transaction of it, simply transferring the properties of the McElwain Company to the International Shoe Company, and the stock then would have had no value, and would have passed out of our sight and out of our use, and I am positive no share of it would have ever been used or referred to when we came into full possession of the few outstanding shares, and I am confident I can make this statement, that had there been no outstanding stock of the few stockholders who were sitting tight, we would, prior to this complaint, have gone through

a form of cancelling the stock and liquidating that company, because as a company it meant nothing to us.

Q. 182. The assets, plants and properties were your sole interest?

[fol. 69] A. The assets, plants and properties were our sole interest; yes, sir.

Examiner Bennett: I think it best at this point to take a recess until two o'clock this afternoon.

[Thereupon, at 12 o'clock noon, May 27, 1924, a recess was had until 2 o'clock P. M. of the same day.]

After Recess, 2 p. m.

Met pursuant to adjournment.

Q. 183. Mr. Rand, examine the printed document I hand you and tell me if you can identify that,

A. I can.

Q. 184. What is it?

A. This is a letter of May 24, 1921, addressed to the first referred stockholders of the W. H. McElwain Company, and signed by the W. H. McElwain Company by J. Franklin McElwain, President, together with a letter of the same date addressed to Messrs. Lee, Higginson & Company, of Boston, signed by the International Shoe Company, over my signature as president of the International Shoe Company. In addition, following my letter, is a condensed consolidated balance sheet of the International Shoe Company and McElwain Shoe Company as of April 30, 1921.

Q. 185. Were those letters you have described written by W. H. McElwain Company and the International Shoe Company in connection with the acquisition of the stock of the W. H. McElwain Company by the International Shoe Company?

A. It is a letter addressed to the stockholders of the McElwain Company after the officers of that company had consummated a trade with the International Shoe Company.

Q. 186. And also the letter of the International Shoe Company to Lee, Higginson & Company, bankers in refer-

ence to the acquisition by the International Shoe Company of the stock in question?

A. That is true.

Q. 187. Do you know that those are correct of the letters which they purport to be?

A. They seem to be and I believe they are. I will read the letters. [Witness reads letters.]

Q. 188. Both of these letters appear to be dated May 24, [fol. 70] 1921, and were they gotten out by the W. H. McElwain Company and the International Shoe Company after the offer of the International Shoe Company for the purchase of the capital stock of the W. H. McElwain Company had been made and accepted?

A. I think so; yes, sir.

Q. 189. And they were written and printed in the form in which they appear here, for the information of the stockholders concerned?

A. Yes, sir.

Q. 190. After it had been agreed upon between the International Shoe Company and the W. H. McElwain Company, or the officers and majority stockholders of the W. H. McElwain Company, that the stock of the W. H. McElwain Company would be acquired by the International Shoe Company, these letters dated May 24, 1921, were gotten out by the respective companies, were they?

A. They were.

Q. 191. Under the negotiations and offers as set forth in the two letters of May 24th, 1921, the International Shoe Company asquired substantially all of the capital stock, of every class, of the W. H. McElwain Company, except the small number you mentioned this morning?

A. They did.

Q. 192. And the stock of the W. H. McElwain Company was acquired by the International Shoe Company and held by it until it was disposed of, after the complaint was issued in this proceeding?

A. Yes, sir.

Mr. Brindley: I now offer in evidence the documents just referred to by the witness, and identified by him; the first is a letter dated May 24, 1921, written to the first preferred stockholders of the W. H. McElwain Company by W. H.

McElwain Company and signed by J. Franklin McElwain, President; and the letter dated May 24, 1921, written to Lee, Higginson & Company, at Boston, Massachusetts, by the International Shoe Company, signed by Frank C. Rand, President, together with supplementary statement attached thereto.

Examiner Bennett: It will be Commission's Exhibit Number 1, and will be received.

[Said document was thereupon marked, for identigcation, [fol. 71] "Commission's Exhibit No. 1, Witness Rand," was received in evidence and is forwarded herewith.]

Q. 193. At the time the stock of the W. H. McElwain Company was acquired by the International Shoe Company those two companies were in competition with each other in the shoe business, were they not?

A. In a very slight degree.

Q. 194. But they were in competition?

A. I cannot recall an instance in which we had McElwain shoes called to our attention in a competitive way, from the standpoint of price or quality.

Q. 195. But they were selling in the same territory in which the International Shoe Company sold, were they not?

A. In such a limited way, if at all, that it did not come to our attention as having any substance to it.

Q. 196. It may be all right about the substance, but weren't they selling in the same geographical territory in which the International Shoe Company was selling?

A. Geographical from the standpoint of cities being in the territory we were covering, but their business was practically a city business and ours was practically a country business.

Q. 197. You sold shoes in the cities though, did you not?

A. In a limited way.

Q. 198. You sold shoes in the identical cities in which W. H. McElwain Company sold its shoes, did you not?

A. We sold a general line of shoes and they sold men's shoes only.

Q. 199. You sold your line of shoes in identically the same cities in which the W. H. McElwain Company sold its men's shoes?

A. Yes, sir.

Q. 200. And at the same time the International Shoe Company was manufacturing and selling a line of men's shoes equal to the line of men's shoes sold by W. H. McElwain Company, was it not?

A. We thought well of our shoes but they sold their shoes under the trade name of the merchant to whom they sold them, and we adhered closely to selling them under the name of the branches of the International Company.

Q. 201. But the the International Shoe Company sold a [fol. 72] shoe that was just as good as the McElwain Company shoe?

A. We thought better.

Q. 202. You thought better?

A. Yes, sir.

Q. 203. And sold in the same states in which the McElwain Company sold its shoes?

A. In some of the states, yes, but they had the entire eastern country in which we had no sale at all.

Q. 204. They sold in the State of Virginia, did they not?

A. Not to my knowledge.

Q. 205. Do you know any of the states in which the W. H. McElwain Company sold its shoes?

A. As a matter of general information—specifically I do not—generally I feel I know, but of my own personal knowledge I do not.

Q. 206. Did they not sell in practically all of the States of the United States?

A. I should think you could get more competent testimony from some one else.

Q. 207. Examine the document I hand you and see if you can identify that.

A. I think I can.

Q. 208. What is it?

A. This is an advertisement announcing the trade for the McElwain Company, the purchase of the McElwain Company by the International Shoe Company, and appearing in the World under date of May 20, 1921.

Q. 209. What names are signed to that advertisement?

A. The International Shoe Company, St. Louis, Missouri; W. H. McElwain Company, Boston.

Q. 210. Was that gotten out with the authority and consent of the International Shoe Company?

A. This advertisement was gotten out by the W. H. McElwain Company and was prepared by them and ready for publication on my arrival at Boston about this time, and I read over the advertisement.

Q. 211. You saw it?

A. I saw it.

Q. 212. And assented to its publication?

A. Yes, sir.

Mr. Brindley: We offer in evidence the document just identified by the witness as Commission's Exhibit Number 2.

[Said document was thereupon marked, for identification, "Commission's Exhibit No. 2, Witness Rand."]

Mr. Brindley: For the purposes of further identification, [fol. 73] it is a page advertisement appearing in the World dated Friday, May 20, 1921.

Examiner Bennett: What World?

Mr. Brindley: I assume it to be the New York World. I think that is correct.

The Witness: That is the New York World.

Examiner Bennett: I do not hear any objection. This will be received as Commission's Exhibit Number 2, at this time.

[Said document, heretofore marked "Commission's Exhibit No. 2, Witness Rand," was thereupon received in evidence and is forwarded herewith.]

Q. 213. When were the first negotiations begun by the International Shoe Company to dispose of the stock of the W. H. McElwain Company?

A. I do not recall when the first negotiations were begun.

Q. 214. It was after the complaint had been issued in this proceeding?

A. That is as I remember.

Q. 215. As you testified, during the conference, as I recall, it was agreed upon that the International Shoe Company would endeavor to dispose of the stock of the W. H. McElwain Company and divest itself of that stock so as to conform to the requirements of the Clayton Act, provided it could retain the assets and properties owned by the W. H. McElwain Company?

A. Not initially. You are quoting me correctly, but I had reference to a conference about which our board knew nothing and the conference was limited to Mr. Blake, Mr. Johnson and myself. We had made an attempt to sell the stock of the McElwain Company and the banker to whom we were trying to sell it wanted an obligation from the International Shoe Company to repurchase or purchase the assets of the McElwain Company. We refused to enter into such an agreement, and Mr. Blake returned from New York and notified Mr. Johnson and me of the development in this trade, and that was dropped and cancelled. We then had this conference in which Mr. Johnson and I felt, and urged it on Mr. Blake, that the International Shoe Company should acquire from the McElwain Company the assets of the company, which was our primary motive. Mr. [fol. 74] Blake then left St. Louis to go to Boston to carry out those plans, and after his meeting with Mr. King, Mr. King telephoned me that he had an unsolicited offer for the purchase of the stock of the McElwain Company and he did not think that we should follow out the plans that Mr. Johnson and I thought were the correct plans. I then asked him if Mr. Blake concurred in that, and he said he did; and he then had telephone instructions from me to go ahead with his plan.

Q. 216. To get it in the record, what persons were present at this conference you have mentioned a few moments ago, where it was determined by the gentlemen present that you would take a certain course of action?

A. Mr. R. E. Blake, Mr. Jackson Johnson and myself.

Q. 217. To get it into the record, who is Mr. R. E. Blake?

A. Mr. Blake is an associate of the International Shoe Company and stockholder of the company.

Q. 218. And its general counsel, is he, or its attorney?

A. He has not been so designated. He is an attorney, but he is here, if I understand his position, particularly to render any service that he can to the company.

Q. 219. An employee then of the International Shoe Company?

A. Yes, sir.

Q. 220. And what is Mr. Johnson's connection?

A. Mr. Johnson is chairman of the board of the International Shoe Company; and I am president of the company.

Q. 221. Following this conference, Mr. Blake left for Boston to consummate the transaction, if possible?

A. Yes; he left with full knowledge of what Mr. Johnson and I thought was the best to do under the circumstances; and then he did not do it.

Q. 222. And it was after his departure that you had a telephone message from Mr. Stanley King?

A. Yes; it was after his departure and arrival in Boston.

Q. 223. The first intimation you had then that Bennett, Limited, had made an offer for the stock was from Mr. Stanley King?

A. Yes, sir. I do not know at that time that I even knew that the offer was from the Bennett, Limited—I am speaking from memory and am referring to this telephone con- [fol. 75] versation. Mr. King told me that he had an offer for the stock of the McElwain Company, and, after asking him if Mr. Blake concurred in it, he was then authorized to go ahead with it; due to the fact that we could not go into it, we could not have it explained over the telephone.

Q. 224. You authorized him, though, to proceed?

A. I authorized him to proceed,—and it necessitates my correcting a slip that I made this morning. Mr. King necessarily was representing the International Shoe Company under that authorization, and I think I testified this morning he was representing McElwain Company. I would like to make that correction.

Q. 225. Do you remember what date it was when you had a communication from Mr. King?

A. My impression is it was between the 1st and 10th of June.

Mr. Blake: It was about the 13th of June, Colonel Brindley.

Q. 226. Do you recall whether any formal action was taken by the stockholders or directors of the company in reference to authorizing Mr. King to proceed with the proposition?

A. Yes, I remember that there was.

Q. 227. Was some action taken?

A. There was some action taken.

Q. 228. And entered on the minutes?

A. Yes, sir.

Q. 229. By the stockholders or directors?

A. This appears to be a copy of the minutes of the board of directors of the International Shoe Company; that is what it is, colonel.

Q. 230. Have you a copy in your hand of the action taken by the board of directors on that proposition under date of June 19, 1923?

A. I have what I believe to be a copy of it.

Mr. Blake: It is a correct copy of it and we will accept it as a correct copy.

Q. 231. I assume it to be that; you gave it to me.

A. Yes, it is a copy.

Mr. Brindley: We will offer this as an exhibit at this time,—as Commission's Exhibit Number 3.

Examiner Bennett: It will be received as Commission's Exhibit Number 3.

[fol. 76] [Said exhibit was thereupon marked, for identification "Commission's Exhibit No. 3, Witness Rand", and was received in evidence.]

Mr. Blake: I would like to have the minutes read, for the benefit of the examiner.

[Witness reads Exhibit Number 3.]

By Mr. Brindley:

Q. 232. Was this authorization as embodied in the minutes of the board of directors of the International Shoe Company of June 20, 1923, communicated to Mr. King?

A. It must have been. I have no specific recollection of it.

Q. 233. In pursuance of this authorization and following the negotiations, did the International Shoe Company sell the stock of the W. H. McElwain Company which it held to the Bennett, Limited?

A. Yes, sir.

Q. 234. What was the consideration for the sale of that stock?

A. $4,063,125.89.

Q. 235. After that did the W. H. McElwain Company convey any property to the International Shoe Company?

A. Yes. I had no part in those negotiations. None of us in St. Louis knew anything about either the sale of the stock or the purchase of its assets until we were advised by Mr. King of his action under my telephone authorization. That purchase was consummated and approved by the International Shoe Company at a later date.

Q. 236. Was a contract or agreement entered into between W. H. McElwain Company and the International Shoe Company in regard to the ale of the assets of the W. H. McElwain Company to the International Shoe Company?

A. I do not know—there must have been, but I do not recall it; I will answer your question "Yes".

Q. 237. When was such a contract made?

A. The twentieth day of June, 1923.

Q. 238. By whom?

A. By the W. H. McElwain Company, signed by Clifford P. Warren, President, and attested by C. S. Howland, and by the International Shoe Company by F. C. Rand, President, and attested by F. A. Sudholt, Secretary.

[fol. 77] Q. 239. Have you a copy of that contract with you?

A. Yes, I have it here [witness indicating].

Q. 240. Is that document you hold in you- hand a correct copy of that contract you have just mentioned?

A. I believe it to be, without comparing it.

Mr. Brindley: I offer this document in evidence as Commission's Exhibit Number 4. It is an agreement dated the twentieth day of June, 1923, between the W. H. McElwain Company and the International Shoe Company.

Examiner Bennett: It is received as Commission's Exhibit Number 4.

[Said agreement was thereupon marked, for identification, "Commission's Exhibit No. 4, Witness Rand", was received in evidence and is forwarded herewith.]

Q. 241. In this agreement of June 20, 1923, Exhibit Number 4, the grantor, W. H. McElwain Company, agrees, as I read it, to execute to the grantee, the International Shoe

Company, all necessary warranty deeds, conveyances, assignments and transfers covering the properties mentioned in this contract; were those conveyances, assignments and transfers properly executed by the W. H. McElwain Company?

A. I believe them to have been; yes.

Q. 242. And were all of those properties, of every kind and description, transferred by appropriate deeds, bills of sale, and the like to the International Shoe Company?

A. All that I know of; yes, sir.

Q. 243. After the transaction was concluded between the International Shoe Company and the W. H. McElwain Company, the W. H. McElwain Company owned no properties, rights or assets, whatever, did it?

A. I cannot answer that. The stock of the McElwain Company was then in the possession of Bennett, Limited, a company that I personally did not know and no officer of whom I have ever met and with whom I have ever had any negotiations.

Q. 244. But, so far as you know, all of the property of the W. H. McElwain Company was transferred and con- [fol. 78] veyed to the International Shoe Company?

A. As far as I know, but I do not know what other properties they may have had.

Q. 245. If they had any you would be seeking it, wouldn't you, under this contract?

A. We would be seeking it if we were entitled to it.

Q. 246. This contract provides that the grantor sell to the International Shoe Company all of its properties and assets, of any and all descriptions, real, personal, mixed, tangible and intangible.

A. That seems rather comprehensive.

Q. 247. That would seem to include all of the property, would it not?

A. I am hesitating, colonel, about testifying to all of the property, as to what men did that I never met and with whom I had no negotiations at all, and I am giving my testimony without attempting to detract from that, but I have no knowledge of that.

Q. 248. So far as you know, all of the property of the W. H. McElwain Company was transferred to the International Shoe Company; that is true, isn't it?

A. As far as I know, yes.

Q. 249. On what date did the International Shoe Company sell to the Bennett, Limited, the capital stock of the W. H. McElwain Company?

A. From this memorandum of agreement, the sale was technically made on the fifteenth day of June, but the negotiations were made prior to that by Mr. Stanley King.

Q. 250. But the agreement bears date of what date?

A. June 15, 1923.

Q. 251. That is the date when the stock of the W. H. McElwain Company was sold and transferred to the Bennett, Limited?

A. Yes, sir.

Q. 252. When was the property of the W. H. McElwain Company transferred and conveyed to the International Shoe Company?

A. On or about June 20, 1923.

Q. 253. How many classes or kinds of stock of the W. H. McElwain Company did the International Shoe Company acquire in the year 1921?

A. Three.

Q. 254. What were those classes of stock?

A. First preferred, second preferred and common.

Q. 255. And the International Shoe Company was hold-
[fol. 79] ing and owning those three classes of stock of the W. H. McElwain Company at the time the complaint was issued in this proceeding?

A. Yes, sir.

Q. 256. And also at the time Mr. Stanley King was authorized to proceed with the negotiations to which you have just testified?

A. Yes, sir.

Q. 257. What action, if any, was taken by the International Shoe Company with particular reference to two classes of that stock?

A. The common stock of the McElwain Company and the second preferred stock was considered worthless, and we felt that it was the right course to surrender and donate to the McElwain Company 52,000 shares of the second preferred and 69,346 shares of the common stock of the McElwain Company.

Q. 258. So those two classes of stock you just mentioned were simply donated to the McElwain Company itself?

A. Yes, sir.

Q. 259. On what condition?

A. On the condition that they be retired and cancelled and extinguished.

Q. 260. Have you before you a copy of the minutes in reference to that transaction?

A. I have.

Q. 261. What is that? A copy of the minutes?

A. The minutes of the board of directors of the International Shoe Company at their meeting June 19, 1923.

Q. 262. That is a correct copy of the minutes of that meeting?

A. I take it to be such.

Mr. Brindley: We will offer this in evidence as Commission's Exhibit Number 5.

Examiner Bennett: It will be received.

[Said document was thereupon marked, for identification, "Commission's Exhibit No. 5, Witness Rand," was received in evidence and is forwarded herewith.]

Q. 263. Then in the transactions between the International Shoe Company and the Bennett, Limited, there was only one class of stock which the Bennett, Limited, secured?

A. I do not think that is true. I think they secured two classes of stock.

Q. 264. What stock was transferred to the Bennett, Limited?

[fol. 80] A. 69,946 shares of first preferred stock, 491 shares of common stock.

Q. 265. No second preferred at all was transferred to Bennett, Limited?

A. No, sir.

Q. 266. In pursuance of the negotiations did you, on behalf of the International Shoe Company, make one or more offers to the W. H. McElwain Company for the purchase of the assets, properties and plants of the W. H. McElwain Company? A. We did.

Q. 267. How many offers were made to the W. H. McElwain Company? A. One, so far as I recall.

Q. 268. Was it one offer in the alternative or two separate offers?

A. We made two offers, either one of which might be accepted by the McElwain Company.

Q. 269. When were those offers made?

A. Seemed to be of June 14, 1923.

Q. 270. They were both dated June 14, 1923?

A. Yes, sir.

Q. 271. Are these documents you hold in your hand correct copies of the offers?

A. I think they are.

Q. 272. And that document you hold in your hand is a copy from what?

A. This appears to be, and I presume is, a copy of the minutes of the board of the International Shoe Company on June 12, 1923.

Q. 273. And the minutes set out the two offers that you made to the W. H. McElwain Company?

A. Yes, the alternative offers.

Q. 274. The two alternative offers?

A. Yes, sir.

Q. 275. And these are correct copies which you have there?

A. Yes, sir.

Q. 276. I do not think you identified that strictly and fully; that is a copy of the minutes of what?

A. I think I did; minutes of the International Shoe Company—the board of directors' meeting of June 12, 1923.

Mr. Brindley: We offer this document in evidence as Exhibit Number 6; it consists of four pages and is dated June 12, 1923 being an excerpt from the minutes of the board of directors of the International Shoe Company.

Examiner Bennett: It will be received.

[fol. 81] [Said document was thereupon marked, for identification, "Commission's Exhibit No. 6, Witness Rand," was received in evidence and is forwarded herewith.]

Mr. Brindley: That is all I care to ask Mr. Rand at this time Mr. Examiner.

Examiner Bennett: You may cross-examine.

Cross-examination.

By Mr. Blake:

X Q. 277. Mr. Rand, is the International Shoe Company making a more extensive line of shoes now than it was in the year 1921?

A. Yes, sir.

X Q. 278. What qualities of shoes have been added to the line since that time?

A. A city type of shoe.

X Q. 279. You mean by that the type of shoes that are sold in *in* the large cities?

A. Yes, sir.

X Q. 280. In your direct examination you made a statement to the effect that there were some fifteen hundred shoe manufacturers in the United States with whom the International Shoe Company was in active competition; did you mean thereby that the International Shoe Company and its salesmen in selling its product come into active competition with all of these fifteen hundred other shoe manufacturers?

A. I had in mind, and thought the question meant, a question of monopoly. The International Shoe Company is making a middle class and type of shoe. There are a number of shoe manufacturers making radically different types, some much lower in grade and some with more refinements in grade, in which there is no more competition with us than there is between a Rolls-Royce and a Ford car.

X Q. 281. In your direct examination you stated that Mr. Stanley King was representing the W. H. McElwain Company in the trade with Bennett, Limited, for the sale of the stock; did you mean to make any such statement as that?

A. I meant to state the facts; Mr. King under personal authority by 'phone from me was representing the interests of the International Shoe Company in the sale of the McElwain stocks and the confusion of names arose in my statement.

[fol. 82] Q. 282. At one point in your direct examination you made a statement about to this effect, that the last contact you had with the trade with Bennett, Limited, was

the telephone conversation which you received from Mr. King in which he notified you of the offer made by Bennett, Limited; is it not a fact that you afterwards participated in the directors' meetings of the International Shoe Company in which the arrangement that was made by Mr. King was ratified and confirmed? A. That is true; and I am surprised at my testimony referring to a contact with Bennett at all. I have never had had any contact with Bennett, Limited, either in person or by letter, and there exists no contact of any kind except through ratification of transactions carried out through Mr. King.

X Q. 283. In your direct examination you made a statement about to this effect, that the only workable plan for acquiring the properties of the W. H. McElwain Company was by means of the transfer to the International Shoe Company of the stock; what did you mean by workable plan?

A. The McElwain Company was insolvent at the time that Mr. King and Mr. Frank McElwain came to us and asked us to take over the company. An examination of their financial statement showed that, even if no further depreciation took place, that the holders of the common stock would not receive anything. The managers of the business had all of their holdings, or practically all of their holdings, in the common stock of the company, and we were unwilling to throw them out and leave the company without any directing men who were familiar with it, or had any experience in it. We therefore declined to go any farther with the trade unless some plan could be devised by which the men who created the business and ran it for such a long number of years could continue to participate in it without their morale being entirely broken down.

X Q. 284. At another point in your direct examination you probably inadvertently stated that the purchase of assets was made from Bennett, Limited.

A. That was a mistake. The purchase of assets was, of course, made from the W. H. McElwain Company, to whom we made our offers on June 4th.

[fol. 83] X Q. 285. Of these branch houses or sales organizations of the W. H. McElwain Company which one sold a general line of shoes and which one sold only the McElwain manufactured shoes?

A. McElwain, Hutchinson-Winch of Boston sold a general line of shoes. McElwain, Morse & Rogers of New York sold a general line of shoes. Nathaniel Fisher & Company of New York City sold a general line of shoes. The McElwain-Barton Shoe Company of Kansas City sold a general line of shoes. The McElwain-Columbus Company sold a restricted line of men's shoes. The McElwain-Chicago Company sold a somewhat restricted line of men's shoes. The McElwain-Young Company of San Francisco sold a restricted line of men's shoes, all of which were made for these last three branches by the McElwain Company.

X Q. 286. At one point in your direct examination the attorney for the commission asked you or indicated in his question that the offer to acquire the stock of W. H. McElwain Company was made by the International Shoe Company; did the International Shoe Company initiate or make any proposition to buy the McElwain stock before the trade was made by McElwain?

A. In the processes of negotiation, and after having seen the financial statement of McElwain Company, the International Shoe Company stated to Mr. King and to Mr. McElwain that we could not go any farther with the negotiations because the company was broke and the management of the company would have nothing left to operate on, and it was at their earnest solicitation that we go further; in fact they made the statement that it had to go further. It was clearly developed in these negotiations, and we could see from an analysis of the statement, that they could not continue to operate in their then condition.

X Q. 287. But no offer was initially made by the International Shoe Company for the stock of the McElwain Company?

A. No. I might add to that not only had we not approached the McElwain Company, but the International Shoe Company has never approached any other shoe company in the world, nor has it ever traded for a solvent company.

X Q. 288. I hand you Commission's Exhibit Number 3, [fol. 84] in which it is stated that the amount to be paid by Bennett, Limited, for the stock which was sold to them by the International Shoe Company is $4,063,125.89; I will ask you what was the correct amount that was paid by Bennett,

Limited, to International for this stock? If that is not an inadvertence in the writing of the minutes.

A. That should be $4,061,094.14.

X Q. 289. In your direct testimony you said that two of the sales branches of the W. H. McElwain Company had been sold instead of being liquidated; which two were they?

A. We sold the Nathaniel Fisher Company to the Nathaniel Fisher managers, to the men who had been operating the business from its beginning; we sold the McElwain-Barton business to Mr. Barton and his sons and Wheeler.

X Q. 290. Are they the individuals who had been conducting that business?

A. Who originated the business and who had been conducting it for a number of years. We tried to sell through McElwain any of the other branches that were then operating, and were unable to do so, and finally when they were discontinued, they were discontinued because of the unsound economic conditions under which they were operating. We are operating the other general lines, the Hutchinson-Winch of Boston, just as it formerly operated, and operating the Morse & Rogers in New York, which is two blocks of the business that we sold out to Fisher & Company.

X Q. 291. In connection with the Commission's Exhibit Number 5, which is the minutes of the International Shoe Company's directors of June 19, 1923, and in which donation and surrender to W. H. McElwain Company of 52,000 shares of second preferred stock and 69,346 shares of the common stock of W. H. McElwain Company was authorized, I want to ask you if there was any value to those stocks?

A. We did not consider that there was any value to them.

X Q. 292. What other reason prompted you to surrender those stocks for cancellation?

A. Reason other than what?

X Q. 293. Other than the fact that they were valueless?

A. We wished to divest ourselves of the stock.

[fol. 85] X Q. 294. I will ask you if that would not facilitate matters and at the same time save the revenue stamps on the transfer of those stocks?

A. That was one of the considerations.

X Q. 295. And if that was not one of the details anticipated in the interest of economy?

A. That is true.

X Q. 296. Do you know anything at all of the two conferences which occurred out here at St Louis between representatives of the W. H. McElwain Company and International Shoe Company prior to the conference of April 8, 1921, in which you participated?

A. Not of my own personal knowledge.

X Q. 297. In this conference of April 8, 1921, at St. Louis, who represented the W. H. McElwain Company?

A. J. F. McElwain and Stanley King.

X Q. 298. How was that conference arranged? By whom?

A. It was arranged by Mr. McElwain or Mr. King, or both of them, to come to St. Louis.

X Q. 299. Where was that conference held? In what part of St. Louis?

A. Held at my residence on Delmar Boulevard.

X Q. 300. I did not mean to refer to April 8th; you knew nothing about that conference?

A. No.

X Q. 301. The first conference you really participated in was April 25th, in St. Louis, at your residence?

A. I think not; the first conference I participated in was in Boston, Mr. Blake.

X Q. 302. The matter had been discussed some time prior then to the conference in Boston in which you participated?

A. When I returned from a trip to Mexico about the middle of April I was advised that the McElwain Company had been trying to start negotiations with us and a meeting had been arranged between the International Shoe Company and the McElwain Company in Boston and the representatives of the International Shoe Company at that meeting, which was about April 25th, were Mr. Jackson Johnson, Mr. W. H. Moulton and myself.

X Q. 303. Who represented the McElwain Company in that conference?

A. Mr. J. F. McElwain and Mr. Stanley King.

X Q. 304. Was there anyone there representing the first [fol. 86] preferred stockholders?

A. Mr. Storrow, of Lee, Higgingson & Company of Boston—James J. Storrow.

X Q. 305. At that conference did you and Mr. Johnson present to the McElwain representatives data and information concerning the standing of the International Shoe Company?

A. Yes, sir.

X Q. 306. As a result of that data and information was a basis of valuation put upon the stock of the International Shoe Company for the purposes of this trade, if agreed upon?

A. The valuation of our stock was pretty accurately determined by its market value at that time and our statement was only a statement in good faith of the continuous successful operation of the company; the statement was used to substantiate the figures we had in mind about the value of our stock.

X Q. 307. What were those figures? The value or the price of the stock?

A. 109 for the eight per cent preferred ctock of the International and $30 for the common stock of the International Shoe Company.

X Q. 308. Were any figures presented by anyone for the W. H. McElwain Company at that conference with respect to the value of its stock?

A. The value of its stock?

X Q. 309. Yes, sir.

A. Mr. Storrow was particularly interested in the first preferred stockholders of the McElwain Company because he had been the banker and distributor of that stock; he had, I think, disposed of quite a little first preferred stock for the McElwain Company previously and he was interterested in the people to whom he had sold the first preferred stock for McElwain Company, and there was a discussion or conference that continued for two days, and quite a little discussion was had, not about the stock but about the sound values as represented in the McElwain Company, and Mr. Storrow's interest was very evident for the heavier of the first preferred stockholders to whom he had sold the stock. He displayed no interest about the second preferred holders and holders of the common stock.

X Q. 310. In a general sort of way, what did the figures as prepared by Mr. Storrow show as to the experience of the McElwain Company as compared with that of the In- [fol. 87] ternational Shoe Company?

A. We gave to him our figures on the operation over a series of years, and he took a lot of figures from the McElwain Company over the same series of years, and he

gave those evidently to an expert figurer, because the results showed that the McElwain Company had done better than we had, and we knew they were broke, so without saying it we did not attach any importance to the figures at all. That was the result of those figures. The display indicated we were running second.

X Q. 311. In going down to this conference on the train had you any figures of the W. H. McElwain Company showing their previous condition?

A. The McElwain Company had submitted to us a trial balance of February 28th, and they stated that this was a trial balance and not a statement based on inventory. In going down to Boston Mr. Johnson and I were together and we took that statement and attempted to analyze it. It showed that their liabilities were $17,000,000 and their total assets, as taken off of that trial balance, were in round figures $28,900,000, and that was less than the capital stock that they had issued at the par value of their certificates. That represented, assuming that the figures as represented by that statement could be worked out, that their common stock, $50, was worth 57 per cent of its par value, or about $27 per share, for a $50 share. That was under the best conditions that could be hoped for.

X Q. 312. In the conferences in Boston what balance sheets or what figures were considered in your discussions?

A. The balance sheet of February 28th, about which I have just been speaking.

X Q. 313. I believe you said that was only a monthly trial balance sheet?

A. That was a trial balance sheet and not based on an actual inventory, and that was all very clearly stated by Mr. King.

X Q. 314. What was the net result of the different interviews and conferences that you had with these gentlemen in Boston?

A. We spent April 25th and 26th in Boston, at the Copley-Plaza Hotel, in a general discussion of this business, and reached an agreement in principle only, that if an actual inventory would be taken, that we would try to work out [fol. 88] some plan by which the trade that was being urged upon us might be consummated. Mr. Storrow, who is a very capable financier, was constantly trying to protect

the first preferred stockholders. At that meeting in Boston nothing, as I recall it, except general principles were agreed on. Mr. Johnson and I left, I think, Tuesday evening for New York, and on the same train Mr. Storrow and Mr. King and Mr. McElwain went down to New York. I do not know at that time that we knew they were going. We then had further conferences at the Belmont Hotel in New York the next day after we had left Boston.

X Q. 315. That was on April 28th in New York?

A. Yes, that must have been April 28th. Instead of two days in Boston I think we spent three days in Boston, the 25th, 26th and 27th of April.

X Q. 316. Was anything definite arranged in the New York conference as to this trade?

A. We met together part of the time and finally we separated and I was continuing the discussion with Mr. McElwain and Mr. King. Mr. Johnson and Mr. Storrow were discussing it in another part of the building, and my knowledge of his discussion was not first hand.

X Q. 317. Then we will pass that. Was any arrangement made at that conference for further conferences; and, if so, when were those conferences to take place?

A. The McElwain Company was to begin immediately the taking of an inventory, and that inventory was to be taken on the basis of sound values of merchandise and the book values of the properties, and we specifically stated we would not consider any proposition from the McElwain Company that was on any other basis than that named, namely, of sound values of merchandise and book values of real estate, buildings, etcetera. That was the essence of the whole basis of negotiation, substantiated by our very thorough understanding at the conferences in Boston.

X Q. 318. Then when was the next conference held, and where?

A. Immediately following the conference in Boston there was a conference——

[fol. 89] X Q. 319. I mean after the New York conference?

A. The next was held in St. Louis, after an inventory had been taken by the McElwain Company, at which time Mr. McElwain and Mr. King notified us that they had completed their inventory and had drawn off some figures which

they would bring with them to St. Louis and submit to us. They came to St. Louis, arriving here the evening of May 7th. We then had a conference at my home on May 8th.

X Q. 320. May 8th was Sunday, was it not?

A. Yes, sir.

X Q. 321. Who represented the McElwain Company in that conference and who represented the International Shoe Company in that conference?

A. Mr. J. F. McElwain and Mr. Stanley King represented the McElwain Company, and Mr. Jackson Johnson, Mr. Moulton, Mr. W. E. Baird and I represented the International Shoe Company.

X Q. 322. You have there in your hand a sheet of paper, and I will ask you to first read it and then state the nature of it, and whether or not you can identify it as a document that was delivered to you at the time these gentlemen came out from Boston for this conference at St. Louis?

A. I can identify this.

X Q. 323. Just read it to the reporter.

A. (Reading.) "May 6, —21. Voted that the Executive Committee of the Board of Directors of W. H. McElwain Company hereby authorize J. Frank McElwain, and Stanley King, President and Vice-President respectively of the Company, to negotiate in behalf of the committee with the International Shoe Company, or officers or representatives thereof, for a consolidation of this company with the International Shoe Company; and it is further voted that the Executive Committee will give to such agreement or plan as the said J. Frank McElwain and Stanley King shall negotiate in the premises its approval and support. The directors of the McElwain Company who are here present, being a majority of the Board of Directors of the Company, unanimously approve the vote of the Executive Committee at this meeting relative to a proposed consolidation of the W. H. McElwain Company and the International Shoe Company and agree that we will give to such agree-[fol. 90] ment or plan as J. Franklin McElwain and Stanley King shall negotiate our approval and support. Signed: J. Franklin McElwain, Charles J. Prescott. Edward L. Prescott. A. G. Matless. Winfield L. Shaw. Seward M. Patterson. Allen N. Bennett. George Hutchinson, Louis B. Jackson. Stanley King."

X Q. 324. I hand you another sheet, which I will ask you to identify and read into the record, please.

A. (Reading:)

"We the undersigned, in consideration of one dollar to each of us paid by J. Franklin McElwain and Stanley King, the receipt of which is hereby acknowledged, agree with the said J. Franklin McElwain and Stanley King that we will sell, assign, transfer and deliver all of the common stock of W. H. McElwain Company that is now owned by us or by members of our families to such party or parties and for such considerations as shall be determined by the said J. Franklin McElwain and Stanley King within one month from this date, hereby constituting the said J. Franklin McElwain and Stanley King our attorneys with full power and authority, during the period named, to sell, exchange or otherwise dispose of the said stock.

"Witness our hands and seals this 6th day of May 1921.

(Signed) J. Franklin McElwain, Charles J. Prescott, George Hutchinson, A. G. Matless, Edward L. Prescott, Winfield L. Shaw, Allen N. Bennett, Louis B. Jackson, Stanley King, and Seward M. Patterson."

X Q. 325. These two documents which you have just read were presented to you by these gentlemen when they came out to this conference of May 8th?

A. Yes, sir.

X Q. 326. This conference you had you say took place at your home on Sunday, May 8th?

A. Yes, sir.

X Q. 327. And at that time did these gentlemen representing the W. H. McElwain Company present to you any additional figures as to the condition of their business?

A. They presented a statement dated April 30, 1921, as the result of the inventory which had been arranged in the conference in Boston.

X Q. 328. I will ask you if you can identify this as a [fol. 91] copy of the statement that was of April 30, 1921, which these gentlemen presented to you?

A. I can.

X Q. 329. What do these figures show as to the condition of the McElwain Company as compared with the statement they had submitted as of February 28th, 1921?

A. This statement shows that the value of the common stock, which on the previous statement taken from the books was worth about 57 cents on the dollar, had been shrunk to only a nominal value, according to the statement. According to the statement it was $69,532.67 as the value of all of the outstanding common stock. That is according to the statement. There were some items on the statement, like the national advertising campaign, of over $200,000, was taken as an asset, and the money had been spent and was worthless, so that item in particular was mentally eliminated by us in consideration of the statement and showed a shrinkage of more than $2,000,000 as compared with the trial balance of February 28th.

X Q. 330. What impression did that make on the gentlemen in the conference?

A. It rather stunned all the men who were present at the conference, and we immediately said, after a few moments' hesitation, after sitting in silence for a little while: "On this showing we cannot go any further with the trade at all."

X Q. 331. Just go ahead, Mr. Rand, and tell, in your own way, what then transpired at the conference.

A. That remark was made in the presence of the several representatives of the International and in the presence of Mr. King and Mr. McElwain. The poor showing threw a damper on the whole thing, and, after having made the one remark that we cannot go any further on this statement as submitted, we sat in silence for a little while; and it was finally agreed that it was difficult for a group of men to do any constructive work, and Mr. King and I were asked if we would not withdraw from the meeting and see if we could come back with any suggestions that might offer a solution of a very bad problem. We did withdraw from that conference and walked out into the garden. Finally he and I went to our room to see if any plan could be worked out. We had this statement here of assets and liabilities.

[fol. 92] X Q. 332. Did you repeat to Mr. King the statement you had made in the general meeting that you could not go on with the trade?

A. Yes. When we got out in the yard alone I said to him "I do not see how it is possible for us to go forward with this"; and without repeating Mr. King's words, but the thought——

X Q. 333. What did Mr. King say to you?

A. He conveyed the thought there must be some solution for it and we have got to go ahead, and he asked me why we could not go forward with it, and I said: "The principal reason is, the showing is very much worse than we had anticipated, and the statement shows, after proper deductions from assets, that the common stock is worth less than nothing, and if we secured that company we could not run it from St. Louis, and if we attempted to run it with the association of the men who have been running it, they would all be broke and hopeless, and they could not succeed, and we would not have the company on that basis, because the basis would be unworkable." Mr. King was necessarily anxious and solicitous about something being done. We then adjourned to my bedroom and then tried to work out some basis for these assets that would express itself in the stock of the company and leave to the management of the company some returns for the efforts of a lifetime; and we did work out some figures on the issue of preferred stock by manipulating those figures so that the various prices for the three types of stock, in round figures, would amount to the same as the value of the company indicated by its inventory figures of April 30th.

X Q. 334. Just prior to this, Mr. Rand, in your talk with Mr. King, had he made any suggestion to you about the International buying the assets outright?

A. He had. All of us felt that we could not go farther with this statement, and when we adjourned from that meeting and went out there I reiterated our previous position that we could not go forward with this trade under these circumstances, and Mr. King said: "Well, we have a loss"—and by the way, I am not attempting to quote words, but I am trying to convey the thought—"but we can adjust those figures to the changed figures that we have, and we can sell the company and the values as they are repre-
[fol. 93] sented, or sell the assets of this company, adjusting the price to what they are worth."

It was not clear to me that that was practical or that we wanted to do that at all, because of the conditions I have previously named, and we were standing fast that we were not interested in the company to shut it up or to try to continue it out of our own efforts, that we could not operate the company at all unless some plan could be worked out by which the men who operated the company up to that point could continue with it and help to operate it.

X Q. 335. Did Mr. King make a specific offer to sell the assets regardless of the effect on the common stockholders?

A. I remember that only in a general way he did. Mr. King and Mr. McElwain's attitude was one of willingness and anxiety to do anything in the world that would relieve them from financial wreck which was on them.

X Q. 336. Just go ahead, Mr. Rand, from the point where you and Mr. King went up to your room and worked on some basis whereby there would be something saved for the common stockholders.

A. We were discussing this deplorable financial condition in which the company found itself. Abstractly, we were not particularly interested in the common stockholders of the McElwain Company; we were vitally interested in the personnel as represented in the management. We discussed and discussed that with Mr. King and Mr. McElwain and all of us were conscious of the fact that the company in this financial condition, with a liability on April 30th of $17,177,000, could not keep its doors open thirty days longer. We discussed among ourselves that if we wanted to buy the company and crush a competitor or get all we could in a hard trade, all we had to do was to wait a very short time and it would drop into our hands, but it would drop into our hands with a group of fine men who were friends of ours, dead broke, and out of that thought, and with a very definite knowledge that if the company was goint to be worth anything to us that it had to continue with an eastern management who were familiar with their type of business as distinguished from our type of business, that we could only trade with them on some basis that would preserve for those gentlemen some of the [fol. 94] results of their efforts up to that time. Following that we did work out some scheme. We worked out a scheme and went downstairs then and submitted it to Mr.

Johnson, to Mr. Baird, to Mr. McElwain, who were awaiting the result that we might work out. Those figures only sort of blazed the way for the final trade we worked out,—the figures we submitted were not the figures that were adopted.

X Q. 337. Did Mr. McElwain continue to take an active part in the discussion of matters in this conference?

A. Mr. McElwain was so completely stunned by the refusal of the International to go any farther that his mind temporarily ceased to function, and Mr. King, although Mr. McElwain was present, carried on all of the negotiations, and Mr. McElwain's mind just would not respond.

You see, Mr. Blake, that company a year before had shown in round figures a surplus of $4,000,000. A year later it showed an actual deficit of four and a quarter millions, making the difference in the operation of the company for twelve months time a little over eight and a quarter million dollars loss; and as a further evidence of the very unsound condition of April 30th, under our operation, when we had helped to fill their factory with shoes, there was still a further loss between May 11th, the time we bought the company, and November 30th, and a further shrinkage of over $4,000,000 taking about eighteen months operation of the McElwain Company, and the last few months being under the most favorable conditions that they could operate in the United States, there was a shrinkage in value of that company, in round figures, of $13,000,000; and it was enough to stun the president of the company.

X Q. 338. Mr. Rand, just what was the tentative basis that you and Mr. King reported after you came downstairs to the conference for the exchange of stock? Was it practically the same basis as set out in the contract dated May 11, 1921?

A. My recollection is we took the number of shares of stock and suggested 80 percent for the first preferred and 70 percent for the second preferred and 60 percent for the common.

X Q. 339. What action was taken then with respect to [fol. 95] those percentages by the general conference there?

A. When those suggestions made by Mr. King and I were submitted to the conference downstairs it was thought

that the common rightly should take the burden of the loss, but not all of the loss, and by multiplying out various prices for these stocks to reach an amount approximately the same as the assets, while we would be buying the assets of the company, the suggestions that were made by Mr. King and I were changed to 82½ percent for the first preferred; 75 percent for the second preferred; and 50 percent for the common; and the total results of the two were similar. The sums produced by the tentative figures because of the difference in number of shares of stock resulted in the same sum total, or approximately the same.

X Q. 340. Was that change of basis of exchange tentatively agreed upon at that time?

A. That was tentatively, and necessarily tentatively, agreed upon, because up to that time it had never been taken up with our board of directors.

X Q. 341. Was it subject also to an audit by anyone?

A. It was subject to confirmation by their public accountants, Harvey S. Chase & Company, who are public accountants in Boston. I had previously explained that this inventory of April 30th, which I mentioned, they had taken off these figures hurriedly and these figures were to be confirmed and approved by the auditors.

X Q. 342. Was it also subject to the approval of Lee, Higginson & Company, who represented the first preferred stockholders?

A. These were entirely tentative figures, and Mr. McElwain and Mr. King had explained that they would have to take up the interest of the first preferred stockholders with Mr. Storrow, who really represented the interests of the first preferred stockholders.

X Q. 343. Mr. Rand, you have indicated the statement of April 30th is a copy of the statement furnished by these gentlemen at that time?

A. Yes, sir.

Mr. Blake: We would like to offer that in evidence as Respondent's Exhibit Number 1.

Examiner Bennett: It will be received.

[Said statement was thereupon marked, for identification, [fol. 96] "Respondent's Exhibit No. 1, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 344. Mr. Rand, I hand you another paper and will ask you if you can identify that as a copy of the minutes of the board of directors of the International Shoe Company of May 9, 1921?

A. I can.

Mr. Blake: I would like to offer that as Respondent's Exhibit Number 2. It consists of two pages.

Examiner Bennett: It is received.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 2, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 345. I hand you another sheet and ask you if you can identify that as a copy of letter that you wrote on May 10, 1921, to Mr. J. F. McElwain, President?

A. I can, and do, identify it.

X Q. 346. I am going to ask you to read that so the judge can get the contents of it.

[Witness thereupon reads letter.]

Mr. Blake: I will offer it as Respondent's Exhibit Number 3.

Examiner Bennett: It is received.

[Said letter was thereupon marked, for identification, "Respondent's Exhibit No. 3, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 347. Where was the final conference held, Mr. Rand, at which the terms of the trade were incorporated into a contract?

A. It was held in Chicago.

X Q. 348. Who were present at that conference?

A. Mr. Jackson Johnson and myself, representing the International Shoe Company; Mr. J. McElwain and Mr. Stanley King, representing the McElwain Company; Mr. James J. Storrow and his partner Mr. Allen, representing the first preferred stockholders of the McElwain Company.

X Q. 349. What was the result of that conference?

A. That resulted in the agreement and plan which was carried out.

XQ. 350. I hand you another document, consisting of three and a half pages, and ask you if you can identify that

[fol. 97] as a copy of the agreement arrived at in Chicago on May 11, 1921, and is the final basis for the acquisition of W. H. McElwain Company?

A. Yes, this is the memorandum of an agreement that was written out by Mr. King, gone over by the several men who were present at the conference, and as signed by them, and by them as proxies for their executive committee, who they represented under the powers of attorney previously read into the record.

X Q. 351. Was the arrangement accepted by Lee, Higginson & Company, who were acting for the first preferred stockholders?

A. It was and was signed.

X Q. 352. And it was satisfactory to all parties concerned then?

A. Yes, sir.

Mr. Blake: I want to introduce this as Respondent's Exhibit Number 4.

Examiner Bennett: It is received.

[Said document was thereupon marked for identification, "Respondent's Exhibit No. 4, Witness Rand," was received in evidence and is forwarded herewith.]

Examiner Bennett: We will adjourn at this time until 9.30 o'clock tomorrow morning.

[Thereupon, at 5.15 o'clock p. m. May 27, 1924, an adjournment was had until 9.30 o'clock a. m. May 28, 1924.]

St. Louis, Mo., May 28, 1924—9.30 o'clock a. m.

[Met pursuant to adjournment.]

X Q. 353. Mr. Rand, at the conclusion of taking of proofs yesterday afternoon we had just completed the conference in Chicago of May 11, 1921, at which the contract for the acquisition of the stock of W. H. McElwain Company was signed by all of the parties interested; between the time the first suggestion of a combination of the International Shoe Company and the W. H. McElwain Company was made on April 8, 1921, and the signing of this contract for the acquisition of McElwain Company how many days had elapsed?

A. Thirty-two or thirty-three days, between those two periods, but I was out of the country; I was in Mexico on [fol. 98] a trip, and the first conference I had about the matter was in Boston, April 24th or 25th.

X Q. 354. Why did the International go through with these arrangements and negotiations so hurriedly?

A. After we got into the matter we found the McElwain Company in an imminent crisis; they were nearing the end of their fiscal year, and we felt that their doors would be immediately closed as soon as a statement was made of their financial affairs, and the president and officers of the company were urging us as strongly as men could urge other men to act with as much haste as possible, to avoid a crisis that would wreck that company and we felt would spread to the whole industry and possibly react on our company as a part of the shoe industry of the United States.

X Q. 355. I hand you a document of two sheets, and ask you if you can identify that; if so, what is it?

A. This is a copy of the minutes of the board of directors of the International Shoe Company at their meeting held on May 12, 1921.

Mr. Blake: We want to offer that as Respondent's Exhibit Number 5. It consists of two pages. Will you mark this for identification?

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 5, Witness Rand."]

X Q. 356. Just tell us, in a general way, what is the nature of that document, Mr. Rand. What was the action of the directors as shown by those minutes?

A. This is a submission of the offer of McElwain Company to sell to the International Shoe Company all of its outstanding stock and setting forth the terms under which the International Shoe Company was willing to pay for all of said stock. This resolution submitted to our board also shows that the net values of all the property of the McElwain Company is the basis on which our figures were made.

Examiner Bennett: You have offered Exhibit Number 5 for the Respondent, and it will be received as Respondent's Exhibit Number 5.

[Said document, previously identified as "Respondent's [fol. 99] Exhibit No. 5, Witness Rand," was thereupon received in evidence and is forwarded herewith.]

X Q. 357. I hand you another document of one sheet and ask you to identify that.

A. This is a copy of another part of the minutes of the board of directors' meeting of the International Shoe Company held May 12, 1921, wherein it was shown that I presented to the board a memorandum of agreement made May 11, 1921, between the International Shoe Company and J. F. McElwain, Stanley King and other stockholders of the majority of the common stock of the McElwain Company, and that memorandum submitted was also signed and approved by Lee, Higginson & Company.

X Q. 358. What action does that document show as taken by the board of directors of the International Shoe Company?

A. The board on that date, on motion of Mr. Watkins, seconded by Mr. Jamison, approved the action of Mr. Jackson Johnson, chairman of the board, and myself, as president, in signing the said agreement.

Mr. Blake: We offer that as Respondent's Exhibit Number 6.

Examiner Bennett: It is received.

[Said document was thereupon marked, for identification, Respondent's Exhibit No. 6, Witness Rand," was received in evidence and is forwarded herewith.]

Mr. Blake: Colonel, that is an exact copy of the minute entry which you saw, only it describes that agreement by its caption, and the whole agreement was not copied into the minutes; that is an exact copy of the minute entry.

X Q. 359. I hand you another document, consisting of two pages, and will ask you to identify that.

A. This is a letter of May 12, 1921, written for the International Shoe Company by me, as president, to James J. Storrow of Lee, Higginson & Company of Boston.

Mr. Blake: We want to offer that, Mr. Examiner, as the Respondent's Exhibit Number 7. It consists of two pages.

Examiner Bennett: It will be received at this time as Respondent's Exhibit Number 7.

[Said document was thereupon marked, for identifica-
[fol. 100] tion, 'Respondent's Exhibit No. 7, Witness Rand,'' was received in evidence and is forwarded herewith.]

X Q. 360. Mr. Rand, when did you receive a report of the audit of Harvey S. Chase & Company?

A. I do not recall when we received the report of that company. I was notified about May 14th, by telephone from Mr. King——

X Q. 361. Where was Mr. King?

A. Mr. King was in Boston and I was in St. Louis—that Harvey S. Chase & Company's audit of the McElwain balance sheet of April 30, 1921, had been completed.

X Q. 362. Just a moment; do you mean the balance sheet of April 30th or May 31st?

A. Of April 30th. That it had been completed, and it was substantially the same as their inventory figures that they had taken off and presented to us as the result of the April 30th inventory. There were some minor modifications in it which Mr. King explained over the 'phone to me. But, broadly, the audit had confined the figures of April 30th as they had been submitted.

X Q. 363. You have there a document of one sheet and I will ask you to identify that.

A. This is a copy of a telegram dated May 14, 1921, addressed to James J. Storrow, Lee, Higginson & Company, notifying Lee, Higginson & Company that the International Shoe Company had accepted Harvey S. Chase & Company's audit of the McElwain balance sheet of April 30th.

Mr. Blake: We offer that in evidence as Respondent's Exhibit Number 8.

Examiner Bennett: It is received.

[Said document was thereupon marked, for identification, ''Respondent's Exhibit No. 8, Witness Rand,'' was received in evidence and is forwarded herewith.]

X Q. 364. You have there another sheet in your hand and I will ask you to identify that.

A. This is a letter of May 14, 1921, addressed to Mr. J. F. McElwain, president of the McElwain Company, Boston, in

which I enclosed a copy of the telegram sent to Mr. Storrow on May 14, 1921.

[fol. 101] Mr. Blake: I offer that as Respondent's Exhibit Number 9, Mr. Examiner.

Examiner Bennett: It is received.

[Said letter was thereupon marked, for identification, "Respondent's Exhibit No. 9, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 365. You have there a document of two sheets, and I will ask you to identify them.

A. This is a letter of May 18, 1921, addressed to Lee, Higginson & Company of Boston, by the International Shoe Company.

Mr. Blake: We want to offer that as Respondent's Exhibit Number 10, consisting of two pages.

Examiner Bennett: It is received.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 10, Witness Rand," was received in evidence and is forwarded herewith.]

Mr. Blake: I would like to have that read, for the benefit of the examiner.

[Thereupon the witness read Respondent's Exhibit 10.]

X Q. 366. On May 26, 1921, weren't detailed notices, explanations, and so forth, concerning the detail of the transfer of stock sent out to the stockholders of the W. H. McElwain Company?

A. They were.

X Q. 367. So that they would understand how the trades would be made?

A. Yes, sir.

X Q. 368. After the trade had been consummated, Mr. Rand, who was left in charge of the McElwain business?

A. The same men who had been running it regularly.

X Q. 369. Do you know in whose name the stock of the W. H. McElwain Company was placed as it was received by the International Shoe Company?

A. In the name of J. F. McElwain and Stanley King.

X Q. 370. I hand you a document consisting of two pages and will ask you to identify that.

A. This is a letter of July 12, 1921, written by me to Mr. Stanley King at Boston.

[fol. 102] Mr. Blake: We want to introduce that, Mr. Examiner, as Respondent's Exhibit No. 11.

Examiner Bennett: It will be received as Respondent's Exhibit No. 11, consisting of two pages.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 11, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 371. You have there a document of one sheet, and I will ask you to identify that.

A. This is a telegram of December 8, 1921, addressed to Mr. Stanley King of Boston.

Mr. Blake: We offer that as Respondent's Exhibit Number 12 at this time.

Examiner Bennett: It is received.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 12, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 372. I hand you a document consisting of two pages, and I will ask you to identify that.

A. This is a letter dated December 9, 1921, confirming the telegram of December 8th to Mr. King, and making further comments on the fixed policies of the company.

Mr. Blake: Mr. Examiner, we offer that as Exhibit Number 13 for respondent.

Examiner Bennett: It is received.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 13, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 373. I hand you a document of one sheet, marked for identification Respondent's Exhibit 14, and ask you if you can identify that?

A. This is Mr. Stanley King's telegram of December 9, 1921, answering the telegram of December 8, 1921, which I sent him.

Mr. Blake: We offer that as Respondent's Exhibit Number 14.

Examiner Bennett: It is received as Respondent's Exhibit Number 14.

[Said document was thereupon marked, for identification, [fol. 103] "Respondent's Exhibit No. 14, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 374. Will you please identify that document of one sheet that I hand you now?

A. This is a letter written by me on June 23, 1922, to Mr. Stanley King of Boston.

Mr. Blake: We offer that as Respondent's Exhibit Number 15, Mr. Examiner.

Examiner Bennett: It is received.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 15, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 375. Mr. Rand, the financial statements which have been submitted to the International Shoe Company had been prepared entirely by the McElwain organization, had they not?

A. Yes, sir.

X Q. 376. The November 30, 1921, balance sheet and accounts as made up, who made those of November 30, 1921?

A. The McElwain organization.

X Q. 377. Do you know, in a general sort of way, what was shown by that November 30, 1921, statement?

A. There was a shrinkage of $4,720,000 in values as compared with the statement of April 30, 1921.

X Q. 378. I hand you a document of two pages which I ask you to identify.

A. This is my letter of May 18, 1923, addressed to Mr. Stanley King at Boston.

Mr. Blake: We offer that as Respondent's Exhibit Number 16.

Examiner Bennett: It is received.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 16, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 379. As a result of the suggestion in that letter, Mr. King did go to Washington, did he not?

A. Yes, sir.

X Q. 380. And then came to St. Louis, where he had a conference with you and Mr. Johnson and Mr. Blake?

A. Yes, sir.

X Q. 381. In your direct examination yesterday you stated that you were influenced at arriving at your plan to divest [fol. 104] the International Shoe Company of the stock of the W. H. McElwain Company by a ruling as promulgated by the Federal Trade Commission, I believe; is that true?

A. Yes, sir.

Mr. Blake: We would like to introduce that ruling at this time, Colonel Brindley.

Mr. Brindley: Let's see it.

Mr. Blake: I haven't an extra copy of it.

Examiner Bennett: I suggest that you read it into the record, then, if you want to introduce it.

X Q. 382. Mr. Rand, I hand you a Corporation Trust Company's Service, Third Edition, containing the conference rulings of the Federal Trade Commission, Bulletin Number 1, issued January 31, 1916, and will ask you to refer to ruling number 8 on page 117 and read it into the record.

A. —"The Right of one manufacturer engaged in interstate commerce to buy out a competitor; and jurisdiction of the Commission in such matters.

"On inquiry as to the right of one manufacturer to buy out a competitor in the same line of business; held, that the only jurisdiction of the Commission in respect of such transaction is to enforce the provisions of Section 7 of the Clayton Act, prohibiting the acquisition by any corporation engaged in interstate commerce of the capital stock, in whole or in part, of another corporation thus engaged, where the tendency of such acquisition may be to substantially lessen competition between two such corporations or to restrain interstate commerce or to create a monopoly, and also possibly to enforce Section 5 of the Federal Trade Commission Act, if such purchase, either of property or of capital stock, in connection with other circumstances might constitute an unfair method of competition. Held, also

that the mere purchase of the property of such competitor other than capital stock is not prohibited by the Clayton Act or the Federal Trade Commission Act. As to the validity of such purchase of property or capital stock under the Sherman Act the Commission expresses no opinion."

X Q. 383. I believe you stated, too, in your direct examination that you were influenced by a very earnest and [fol. 105] sincere desire to comply with an order that you anticipated might be handed down by the commission?

A. I so stated.

X Q. 384. Then you delegated Mr. King and Mr. Blake to work out the details necessary to arrive at that compliance?

A. I did.

X Q. 385. I will ask you to identify this sheet of paper that I hand you and state what it is.

A. This is a letter written by me on May 24, 1923, to W. H. McElwain Company, tendering my resignation as president and director of the W. H. McElwain Company, to be effective upon its acceptance by the directors of that company.

Mr. Blake: We offer that in evidence as Respondent's Exhibit Number 17.

Examiner Bennett: It will be received as the Respondent's Exhibit Number 17.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 17, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 386. I now hand you two documents which I will ask you to identify.

A. These two documents are dated June 4, 1923, and represent alternative offers made by the International Shoe Company to the W. H. McElwain Company for all of their properties, real, personal and mixed, tangible and intangible.

Mr. Blake: We would like to introduce it.

Mr. Brindley: They are already in the record.

Mr. Blake: In another form, in connection with the minutes.

Examiner Bennett: Received as Respondent's Exhibits 18 and 19.

[Said documents were thereupon marked, for identification, "Respondent's Exhibit- 18 and 19, Witness Rand," were received in evidence and are forwarded herewith.]

X Q. 387. In your direct examination yesterday you stated that when Mr. Blake reported to you the requirement of George H. Burr & Company, bankers, of New York, that there be a collateral agreement on the part of the International Shoe Company to buy the assets of W. H. McElwain Company, that then the negotiations with George [fol. 106] H. Burr & Company were terminated, and then Mr. Blake returned to St. Louis, and there was a conference with you and Mr. Johnson?

A. I did.

X Q. 388. Mr. Blake was then instructed to go back to Boston and carry out a plan which had been suggested by you and Mr. Johnson for merely transferring the assets to International Shoe Company and liquidating the W. H. McElwain Company?

A. That was the plan we agreed on in the conference of three.

X Q. 389. When Mr. Blake returned to Boston Mr. King called you by 'phone and suggested another plan and stated that he had an unsolicited offer from Bennett, Limited, to buy the stock; did Mr. King state to you that there was to be any collateral agreement with Bennett, Limited, for the International Shoe Company then to buy the assets of W. H. McElwain Company?

A. He did not.

X Q. 390. Has Mr. King at any time reported to you that there was any collateral agreement to buy the assets of the W. H. McElwain Company?

A. No, sir.

X Q. 391. Did you not in that conversation give Mr. King carte blanche to go ahead and carry out the plan as he had it in mind and as agreed to by Mr. Blake?

A. I did. I specifically told him that I could not participate in a plan at this distance and that we would leave the matter entirely up to him and to you, if you were in agreement on the plan that he had mentioned.

X Q. 392. Wasn't that to be regardless of what you and Mr. Johnson had agreed upon as the proper course before Mr. Blake left St. Louis?

A. Yes, they abandoned and rescinded the plans we had been thinking of.

X Q. 393. Referring to Commission's Exhibit 6, which is the minutes of the directors of the International Shoe Company of June 12, 1923, ratifying the offers in the alternative of the International Shoe Company for the assets of the W. H. McElwain Company, and dated June 4, 1923, I will ask you if this action of the board of directors ratifying these offers was not made on the presumption that W. H. McElwain Company would accept the offers and in [fol. 107] order to expedite matters for the carrying out of the plan?

A. It was.

X Q. 394. As another step for expediting the plan didn't the board of directors on the same date authorize you, as president, and Mr. Sudholt, as secretary, to execute an agreement for the purchase of the assets of the W. H. McElwain Company in anticipation of the acceptance by that company?

A. A reference to the minutes of that date shows that Mr. Sudholt as secretary and I as president were so authorized.

Mr. Blake: Without reading that, we would like to offer that as Respondent's Exhibit Number 20.

Examiner Bennett: It is received as Respondent's Exhibit Number 20, consisting of two sheets.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 20, Witness Rand", was received in evidence and is forwarded herewith.]

X Q. 395. Mr. Rand, I will ask you if these different preliminary steps were not taken on advice of Mr. Blake as details that could be gotten out of the way and would expedite matters, so that the company would be in a position to include in its answer to the complaint, which was due for filing on July 7, 1923, a showing that it had attempted to comply with the anticipated order of the commission?

A. They were.

X Q. 396. I will ask you to identify that document of one page that is now in your hand.

A. This is a memorandum of agreement between the International Shoe Company and the Bennett, Limited, dated June 15, 1923, signed by Stanley King, for the International Shoe Company, and Pierre E. Bonin, for the Bennett, Limited.

Mr. Blake: I offer that as Respondent's Exhibit Number 21, Mr. Examiner.

Examiner Bennett: It is received as Respondent's Exhibit 21.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 21, Witness Rand", was received in evidence and is forwarded herewith.]

X Q. 397. Mr. Rand, the negotiations with Bennett, [fol. 108] Limited, were carried on exclusively by Mr. King, were they not?

A. I do not know whether you had anything to do with them or not. Mr. King was authorized by me to carry them on. So far as I know, he was the only man negotiating with them.

X Q. 398. Mr. Rand, will you state the attitude of the International Shoe Company after acquisition of the W. H. McElwain Company as to the different selling departments or branches which the McElwain Company had formerly maintained in Columbus, Ohio, Chicago, Kansas City, San Francisco, and New York; and what disposition was made of them?

A. We tried to sell the branches, as many as we could, to the parties who were operating; and we succeeded in selling the Fisher Company of New York to the Fisher people, who had been operating the company and who had organized it; and we sold the Barton Company at Kansas City to Barton and his sons and Wheeler, who had been operating the company. We tried to sell the Chicago company and the Columbus company and the San Francisco company, but were not successful in doing so.

X Q. 399. In the two sales that you were successful in making were the terms to the purchasers advantageous; and, if so, to what extent?

A. We made attractive offers and advantageous offers to Fisher, as proved by his operation, and he was very anxious to acquire the company on the basis we offered if

to him. The same thing was true with Barton. In both cases the International Shoe Company made sacrifices to sell those businesses to the people who formerly operated them.

X Q. 400. I will ask you if in each of those cases considerable credit was not extended to both of the purchasers over a period of a year in payment?

A. A year or more, yes, in partial payments.

X Q. 401. Mr. Rand, in your direct examination yesterday you stated that while there was perhaps some competition between the W. H. McElwain Company and the International Shoe Company prior to the trade, that that competition was not substantial, and you assigned certain reasons; tell us if it is not possible for two shoe manufacturers [fol. 109] to sell shoes in the same territory, in the same states, in the same cities, or in the small towns even, without actually competing?

A. That is not only possible, but it is an absolute fact. That is being done daily by different lines that do not conflict with each other.

X Q. 402. Was not that predominantly the situation between the International Shoe Company and the W. H. McElwain Company?

A. I think to an extreme degree, because of the radical differences in the products of the two companies. I have been associated with this company since 1898 and I do not recall a time when there has come to my attention or where we were in competition for a single order with the McElwain Company. In our daily experiences we hear about competitive shoes, striving to get business in the proper way. Men send us shoes that are offered by competitors to see what values we might offer them—I am speaking of merchants—our salesmen get shoes and send them in, and they are shoes that are developing competition; I do not recall that a merchant ever raised the issue or a salesman ever sending in a sample of one of McElwain's shoes as in competition with ours. That is true of many other companies in the United States.

X Q. 403. The complaint alleges that the effect of this acquisition was to restrain interstate commerce or business; considering the condition of the W. H. McElwain Company, what was the effect of this acquisition with re-

spect to this business and interstate commerce; did it restrain it or did it preserve that business?

A. At the time that the McElwain people came to us to offer the company to us and urge us to take over the company, they were not in a position to compete with anyone; their factories had been reduced from an estimated capacity of 38,000 or 40,000 pairs a day to an actual operation of 6,000 or 7,000 pairs per day, and they were overstocked on merchandise, with prices that were not competitive, as we saw them, from the general market. The result of the negotiations and the consummation of the trade, in my belief, is that we continued and created a competition that would have been entirely gone—even if it had existed in a [fol. 110] slight degree, would have been gone in thirty or sixty days, for there would have been no McElwain Company.

X Q. 404. In other words, the result of this acquisition was that the International Shoe Company by its acts preserved the business that was formerly done by W. H. McElwain Company?

A. Unquestionably.

X Q. 405. In connection with this trade with the owners and managers and executives of the W. H. McElwain Company, was there any contract or agreement of any kind restraining these former owners or managers from engaging in the shoe manufacturing business in any part of the United States or elsewhere?

A. There was never even a thought of such a condition and no such agreement was ever reached.

X Q. 406. Have you, in a general way, knowledge of the fact that many of these executives who are not now connected with the International Shoe Company, but who were formerly connected with the W. H. McElwain Company, are actually engaged in the shoe manufacturing business in the United States?

A. They are.

X Q. 407. Can you name any instances?

A. J. F. McElwain, former president of the McElwain Company, is president and manager of the J. F. McElwain Company, with headquarters in Boston and factory in Nashua, New Hampshire.

X Q. 408. Just a minute; isn't one of the old W. H. McElwain factories which is now owned and controlled by

the International Shoe Company also located at Nashua, New Hampshire?

A. Yes.

X Q. 409. Proceed.

A. There is associated with Mr. J. F. McElwain in his company Mr. Patterson, who was a director of the W. H. McElwain Company, and also Mr. Murphy, who was a director of the W. H. McElwain Company and in charge of their manufacturing department.

X Q. 410. What about Mr. A. E. Swan, who was formerly comptroller of the W. H. McElwain Company?

A. He is in the same capacity with J. F. McElwain.

X Q. 411. What about Mr. A. G. Matless, former director [fol. 111] of the W. H. McElwain Company?

A. He is now partner and head of the sales of the Commonwealth Shoe & Leather Company of Boston.

X Q. 412. What of K. L. Barton, former director of W. H. McElwain Company?

A. He is manager of Foote, Schultz Company of St. Paul.

X Q. 413. How about Mr. Irving R. Fisher, a former director?

A. He is president of the Fisher Shoe Company of New York City.

X Q. 414. In 1921 according to the census bureau of statistics and the records of the International Shoe Company and the W. H. McElwain Company, what was the combined business of the International Shoe Company and the W. H. McElwain Company, that is, as to the whole business in the United States?

A. As compared with the total business of the shoe industry of the United States?

X Q. 415. Yes, sir.

A. Estimated in pairs, it was less than eight percent.

X Q. 416. You mean estimated or computed in pairs?

A. Computed in pairs and in dollars it was less than seven percent of the total.

X Q. 417. What percentage of the total shoe business in the United States was acquired by the International Shoe Company in its acquisition of the W. H. McElwain Company?

A. About 1⅓ percent.

X Q. 418. In your direct examination yesterday you stated there were more than fifteen hundred other independent shoe manufacturing concerns in the United States; does the International Shoe Company in any way control or influence the production of these other fifteen hundred shoe manufacturers in the United States?

A. No.

X Q. 419. Does the International Shoe Company own or control or influence any one of the other fifteen hundred shoe manufacturers in the United States?

A. No.

X Q. 420. Does the International Shoe Company own or control at the present time any stock or share capital of the W. H. McElwain Company?

A. No.

X Q. 421. Does any officer, director or stockholder of the [fol. 112] International Shoe Company own or control any stock or share capital of the W. H. McElwain Company?

A. No.

X Q. 422. Was the situation, the financial crisis, in which the W. H. McElwain Company found itself in April and May of 1921 the result in any way of acts of the International Shoe Company?

A. No.

X Q. 423. Prior to the approaches that were made by officers of the W. H. McElwain Company in March and April of 1921, had the International Shoe Company solicited, sought for, inspired or induced in any way an offer from the W. H. McElwain Company to acquire its business?

A. No.

X Q. 424. Was the International Shoe Company, or any of its officers, in any wise responsible, directly or indirectly, for those offers?

A. No.

X Q. 425. Is it not a fact that the gross figures in dollars and cents on which the trade was consummated resulted from a computation of the supposedly sound values of the real and personal properties and assets of the W. H. McElwain Company?

Mr. Brindley: What trade is that?

Mr. Blake: That is the original trade for the acquisition of the W. H. McElwain Company; the original trade.

A. That is true.

X Q. 426. Didn't that trade actually contemplate a full and complete transfer of the business and assets to the International Shoe Company and not a mere merger or controlling stock interest?

A. It contemplated and stated it should be all.

X Q. 427. In its efforts to acquire a full, complete ownership of the business of the W. H. McElwain Company, didn't the International Shoe Company leave open the offer to the stockholders of the W. H. McElwain Company even beyond the period it was contracted for?

A. It did.

X Q. 428. Did it not even at later dates acquire some of this stock by actual purchase for money from the different stockholders?

A. It did.

X Q. 429. You stated in your direct examination yester- [fol. 113] day that really all that the International Shoe Company had been and was interested in was the acquisition of the properties, factories, of the W. H. McElwain Company; why, then, was it that the formalities of the sale of the assets by the McElwain Company to the International Shoe Company and the dissolution of that company was delayed for so long?

A. Because of the few stock certificates that had not come in.

X Q. 430. But the International Shoe Company really had in mind all the time to take care of those formalities and acquire the assets?

A. Yes, working out the details of that was repeatedly taken up,—taken up with Mr. King and with Mr. Blake.

X Q. 431. I will hand you another sheet which I will ask you to identify.

A. This is a letter of February 20, 1923, dated at Boston and written by Mr. Stanley King to Mr. R. E. Blake at St. Louis, Missouri.

X Q. 432. I will hand you another sheet which I will ask you to identify as a copy of the original which you have just recognized.

A. This is a copy of Mr. Stanley King's letter of February 20, 1923, addressed to Mr. R. E. Blake at St. Louis.

Mr. Blake: We offer that in evidence as Respondent's Exhibit Number 22, Mr. Examiner.

Examiner Bennett: The copy will be received as Respondent's Exhibit Number 22.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 22, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 433. In your direct examination yesterday you testified as to the number of shares of different classes of stock of the W. H. McElwain Company which had been acquired at the time of the filing of the complaint in this case; in order to refresh your recollection, I will ask you if at that time the International Shoe Company had not acquired all except 35 shares of the first preferred stock of the W. H. McElwain Company and all except 50 shares of the common stock of the W. H. McElwain Company and all of the second preferred stock of the W. H. McElwain Company?

A. I recall that there was only one stockholder that held [fol. 114] out any common stock and that was 50 shares, and all of the second preferred stock had been acquired, and I have no definite memory that it was 35 but my memory would have been a nominal number of shares, and I should have stated 35 to 50.

X Q. 434. Of the first preferred stock?

A. The first preferred stock. For months prior to the complaint we had been urging Mr. King to try to get in all of the shares, prior to the complaint, and he had notified me from month to month how many additional shares had come in, so it had gotten down to an insignificant number.

X Q. 435. As a matter of fact, didn't the contract with the executives and with the W. H. McElwain Company guarantee that these executives of the W. H. McElwain Company would see that these shares were delivered to the International Shoe Company—all of them?

A. We had a guarantee at the time the purchase was made that all shares should be delivered to us.

X Q. 436. Has any effort been made to enforce that guarantee so far?

A. No efforts beyond a constant urging to carry out what was stipulated, not only urging but helping where we could to have that part of the contract carried out.

X Q. 437. In May 1921 what were the conditions from a business standpoint in the United States?

A. With regard to the shoe business or general industry of the United States?

X Q. 438. In both.

A. We were in the midst of an industrial and commercial crisis with rapidly declining markets in nearly every industry from an extremely high war peak. The markets in the latter part of 1919 and in the first six to nine months of 1920 had gone to unreasonable and unsound heights of inflated values, and they were coming down very precipitously in 1921, with disaster to many industries and many corporations.

X Q. 439. What were the conditions particularly with respect to the shoe and leather industries?

A. The shoe industry represented, as I recall it, about the second industry that felt the full burden of these changed conditions. If my memory serves me correctly, the silk industry was the first one that caught the depression and the next one was the leather and shoe industry. [fol. 115] That is best evidenced by the records of loss established by the Central Leather Company during that period.

X Q. 440. You mean that that is illustrative of the condition that really hit the whole market?

A. Yes, that was widespread. Speaking broadly, I doubt if the shoe industry, the combined shoe manufacturers of the United States, earned a dollar in 1921.

X Q. 441. Prior to this period of crisis what had been the standing of the W. H. McElwain Company in the New England district?

A. They stood high. They enjoyed good financial credit and the confidence of the entire New England. Their statement of 1920, I think May 31, 1920, was indicative of their financial strength at that time.

X Q 442. What did that statement show as to their financial condition?

A. Their statement of May 31, 1920, showed a working capital of $16,981,000, with a surplus of $3,888,000. On April 30, 1921, they showed a deficit of $4,382,000.

X Q. 443. What is the loss in condition between May 31, 1920 and April 30, 1921?

A. They show a loss of $8,270,578, and between April 30, 1921 and November 30, 1921, with all of the assistance that the International Shoe Company could render to them, there was a further loss of $4,720,939, so that in their working capital that shrinkage had taken place between May 31, 1920 and November 30, 1921, of $12,991,517.

X Q. 444. Leaving a working capital at that time of how much?

A. 3,989,823.

X Q. 445. What do these figures show as to the value of the different classes of the McElwain stock?

A. The common and second preferred were entirely wiped out, and the first preferred would be worth about $50 to $55 per share.

X Q. 446. What would have been the value of these preferred shares if this company had been forced into liquidation, in your opinion as a business man?

A. That is problematical, but in my judgment I think that in liquidation that the first preferred stockholders would have been exceedingly fortunate if they had gotten as much as $15 or $20 per share for their stock, without anything for the second preferred and common stockholders.

[fol. 116] X Q. 447. The figures that you have used there have been taken from balance sheets that were prepared by the auditors and employees of the W. H. McElwain Company, were they not?

A. Those of May 31, 1920 and April 30, 1921, were. The figures of November 30, 1921, were prepared in the International's office and audited by accountants Marwick Mitchell.

X Q. 448. What, in your opinion, as a business man would have been the result on the conditions in New England and the general business conditions if the W. H. McElwain Company had proceeded and been forced into liquidation?

A. To my actual knowledge it would have been disastrous to their creditors and their stockholders and to my judgment it would have been a wide-spread evil throughout that whole part of our country and would have tended to break down the confidence in the entire shoe industry in the financial world. That is, I am confident of that impres-

sion because of the questions that are now arising and have repeatedly arisen in banking circles about certain industries that have shown an inability to meet these very changed conditions.

X Q. 449. You have stated that prior to the acquisition by the International Shoe Company on May 11, 1921, the McElwain factories had slowed down in their production to about six thousand pairs of shoes a day with a possible capacity of thirty-eight to forty thousand pairs a day; is it not a fact that immediately after the acquisition, and immediately after the execution of the agreement of May 11, 1921, the International Shoe Company gave orders for the production of shoes to the McElwain factories so as to increase their production?

A. That was begun immediately and was continued in increasingly large volume so that those factories immediately became active instead of closing up.

X Q. 450. What percentage of the output of the McElwain factories would you say from that time forward the International Shoe Company took?

A. More than fifty percent.

X Q. 451. What did the International do with respect to the large surplus of McElwain shoes which you say was stored up in their different houses?

A. We cut the prices on the shoes and sold or tried to sell them.

[fol. 117] X Q. 452. Were they sold only through the McElwain sales force or did you also put your International Shoe Company's sales agencies to work in selling those shoes?

A. At that time, of course, all of the sales forces were International sales forces, but the western sales force of the International Shoe Company were given samples of shoes which were held in large quantities, and we sold and distributed many of those shoes, explaining in each case that the shoes were constructed differently from the way the western branches of the International Shoe Company had always made their shoes; in other words, sold the shoes for what they were, on their merits.

X Q. 453. Mr. Rand, I will ask you to refresh your recollection and then state what the International Shoe Com-

pany did in the way of finincial assistance to the W. H. McElwain Company.

A. Between May 11 and May 31, 1921, the International Shoe Company advanced in cash to the McElwain Company $900,000, with which to meet its obligations. In the month of June there was advanced $4,400,000 more. On November 30, 1921, it had advanced cash to the sum of $11,235,778.

X Q. 454. I believe you stated yesterday in your direct examination that the motives of the International Shoe Company in acquiring these properties were not entirely altruistic, and that the International Shoe Company had enjoyed an unusual and remarkable prosperity in spite of the bad experience that seemed to have fallen upon other shoe manufacturers during this period of depression, and that you needed considerably more production because of the fact that the International Shoe Company was largely oversold on its product and could not supply its customers with shoes as promptly as it would like; that is one of the motives other than the altruistic motives which actuated the International Shoe Company, is it not?

A. Yes; I stated that yesterday.

X Q. 455. Had the International Shoe Company up to that time been building factories as rapidly as it could?

A. Yes, we had been building factories, but it was a slow process and they had fallen far short of our sales and the [fol. 118] demand for additional shoes of the kind and qualities that we were making.

X Q. 456. Did this prosperity of the International Shoe Company and the good condition in which it found itself at that time result from the acquisition of McElwain?

A. It preceded it.

X Q. 457. Before acquiring the McElwain Company you had examined its financial statements and knew its critical condition, did you not?

A. We had examined the statements and we were able to intelligently interpret what that statement meant. We had not looked into their inventories or personally inspected their plants.

X Q. 458. As a business man you knew that the W. H. McElwain Company, unless it found some concern which

was able, ready and willing to acquire it, would be forced into liquidation, did you not?

A. Yes; we knew they were broke and told them they were.

X Q. 459. You knew, too, if you had been so disposed, you might have waited a few weeks or at the most a few months and that you could have bought them at a sacrifice sale; is that not true?

A. We knew they were insolvent and we did not believe they could run sixty days longer under their financial condition at that time. They were, in our judgment, hopelessly insolvent.

X Q. 460. In spite of that knowledge and that belief, you went ahead with this trade and acquired them on the basis that has heretofore been set out?

A. We did. I would like to add, if I may, that I have never known a trade to be handled or worked out in a finer or broader spirit of equity and fairness. I know this because I participated in it. We raised above our fixed basis of dollars and cents pressed down to the lowest possible basis.

X Q. 461. Has the International Shoe Company at any time acquired a shoe factory or business for the purpose of closing it down?

A. We never have.

X Q. 462. Has it ever forced or induced the sale to it of any competitor's factory or business?

A. We never have.

X Q. 463. Has it in any case, at any time, used methods which could be in any wise considered as unfair or having [fol. 119] been responsible for the failure of a competitor?

A. It has not; and, on the other hand, it has repeatedly been of assistance to competitors in the shoe manufacturing industry.

X Q. 464. You mean to say that there are occasions when the International Shoe Company has assisted its competitors when they were in difficulties?

A. I do.

X Q. 465. Would you name some instances?

A. Yes. I am thinking of the Werthheimer-Schwartz Shoe Company that failed here in St. Louis. The International Shoe Company helped them to wind up their affairs

to the benefit and profit of their stockholders and creditors. We were asked by the creditors to take hold of it as being able to work it out to the best advantage. The International Shoe Company has lately within the past three months been of assistance to another local shoe manufacturer that was in financial troubles.

X Q. 466. What was the name of that company?

A. I hesitate to mention the name only because it might embarrass the company.

X Q. 467. I would like to have it in the record, Mr. Rand.

A. Lund-Williams Shoe Company.

Examiner Bennett: We will now take a recess until 2 o'clock this afternoon.

[Thereupon at 12 o'clock noon a recess was had until 2 o'clock P. M. of the same day, namely May 28, 1924.]

After Recess, 2 P. M.

Examiner Bennett. We are ready to proceed now.

X Q. 468. Mr. Rand, since the adjournment this morning have you had an opportunity to refresh your recollection as to the individuals who made up a financial statement of the W. H. McElwain Company for November 30, 1921?

A. Yes, I have.

X Q. 469. Do you care to make any correction as to the statements that you made this morning?

A. In referring to the figures of McElwain's statement I stated that the figures of May 1920 and April 30, 1921, were made by the McElwain Company and the figures of November 30, 1921, were made by the International Shoe [fol. 120] Company; and I want to enlarge on that statement. The figures of all three statements were made by the same people, and what I meant by my statement this morning was that after May 1921 that all of the company was considered International, but no one from St. Louis participated in those figures that were submitted by the McElwain Company. The final results came to us by wire, and they were engrossed in the statement of the International Shoe Company, both east and west, and were audited by Marwick Mitchell, but the point I am trying to clarify is not to be misunderstood as to who made the figures or who took them.

X Q. 470. Who took the inventory at that time?

A. The same parties who had taken the inventory of April 30th.

X Q. 471. You mean employees of the W. H. McElwain Company?

A. Yes, I mean employees of the W. H. McElwain Company, and the results of the figures were sent out to us by wire.

X Q. 472. Mr. Rand, have you ever traveled as a saleman for the International Shoe Company?

A. Not for the International Shoe Company, but I did travel as a traveling shoe salesman for Roberts, Johnson & Rand Shoe Company; I was on the road about four years.

X Q. 473. Have you been actively in touch with the sales end of the business of the International Shoe Company since its organization?

A. Yes; I come in contact with a great many of our customers, both personally and by letter.

X Q. 474. Have you been in touch with the competition that arose in the different years in connection with the sales of the product of the International Shoe Company?

A. Yes, I have been in touch with that from two right important standpoints, both as a salesman and having a deep interest in sales and also as a manufacturer. I was actively in charge of the factory making our men's fine shoes for five or six or seven years.

X Q. 475. Are you still actively in touch with those matters?

A. Yes, sir.

X Q. 476. Is it not true that the same individuals who founded the business of the International Shoe Company [fol. 121] some years ago and who developed it are still the same individuals who mainly own and control the business at the present time?

A. Yes; in the main the International Shoe Company is owned and controlled by the same individuals who founded the business about twenty-five years ago and have developed it since then. The progress and growth of the company in this section of the country, where shoe manufacturing was formerly almost unknown, has been due, in my judgment, to the policies of careful and economic administration, and the fact that the company has at all times manufactured honest, durable, all-leather shoes, and has refused

to use paper or imitations of leather, or any other cheap substitutes, and it is a policy that was initiated a number of years ago by Roberts, Johnson & Rand, who were the pioneers and champions of that policy at a time when the all-leather shoes, the production of all-leather shoes, was generally ridiculed in the industry, and at the beginning it invited a good deal of antagonism at a time when the International Shoe Company was a young and unimportant factor in the industry.

Mr. Blake: That is all.

Redirect examination.

By Mr. Brindley:

Q. 477. Does the International Shoe Company sell its products to retail stores exclusively?

A. Yes, sir.

Q. 478. And was that the policy of the International Shoe Company at and prior to the time it acquired the stock of the W. H. McElwain Company?

A. Yes, sir.

Q. 479. The International Shoe Company does not own or operate any retail shoe stores, does it?

A. No.

Q. 480. Has it ever?

A. No.

Q. 481. Its policy then has always been to sell its product to the retail shoe dealer?

A. Yes, sir.

Q. 482. The policy of the W. H. McElwain Company prior to the time this stock was acquired by the International Shoe Company was to sell its product to wholesalers, jobbers and retail dealers in shoes, was it not?

A. Yes, sir.

Q. 483. And that was the policy pursued by the W. H. [fol. 122] McElwain Company at the time the International Shoe Company acquired its stock?

A. I think that that might have been the policy, but they were in such a condition they were not selling shoes to anyone.

Q. 484. That was their general policy, was it?

A. I think so.

Q. 485. At the time the International Shoe Company acquired the capital stock of the W. H. McElwain Company how many sales branches or selling agencies did the International Shoe Company own and operate?

A. Five.

Q. 486. What were they?

A. Roberts, Johnson & Rand, Peters, Friedman-Shelby, Continental and Shoe Specialty.

Q. 487. *The first three are located in St. Louis?*

A. All five of them are located in St. Louis.

Q. 488. After the International Shoe Company acquired the stock of the W. H. McElwain Company you testified, I believe, that the International Shoe Company disposed of the selling agencies operated by the W. H. McElwain Company, with the possible exception of three, I believe?

A. That is correct.

Q. 489. Those three that the International Shoe Company did not dispose of were located in what cities?

A. Two in Boston and one in New York City.

Q. 490. The other selling agencies through which the W. H. -Elwain Shoe Company sold its products severed their connection with the W. H. McElwain Company and with the International Shoe Company after the acquisition of the stock?

A. Two of them bought the business which the individuals were operating.

Q. 491. You mean bought the interest of the W. H. McElwain Company in that particular business?

A. Yes, and in that way they severed their connection.

Q. 492. Were any of those selling agencies discontinued after the International Shoe Company acquired the stock of the McElwain Company?

A. Yes, sir.

Q. 493. How many sales agencies were there in which the W. H. McElwain Company had an interest at the time of the stock acquisition and with whom connection with the W. H. McElwain Company was severed? What selling agencies [fol. 123] were there that you disposed of entirely so far as any interest of the McElwain Company was concerned?

A. Two.

Q. 494. What were they?

A. Fisher & Company in New York and Barton of Kansas City, Missouri.

Q. 495. After the acquisition of stock by the International Shoe Company were McElwain shoes or International shoes sold to these agencies?

A. Both of them, yes, for a time.

Q. 496. For how long?

A. Probably a period of a year's time. We had sold those companies to those men on easy terms of payment and they were obligated to us and we helped them out by selling to them in the period in which they were to pay us for the purchase of the company.

Q. 497. You helped carry them as long as they were indebted to you?

A. No, we did not enter any such agreement as that.

Q. 498. You sold them shoes?

A. We sold them shoes, and I was answering your question as to how long that continued.

Q. 499. Did it discontinue then after they had paid for their business which they had purchased?

A. That discontinued, as I recall it, before the payments had been made. Our whole relation to them was that we were trading on an equitable and friendly basis and we were friendly rather than antagonistic. If we could serve them any way, it was to our mutual interest to go along.

Q. 500. After the stock of the W. H. McElwain Company was acquired by the International Shoe Company did the W. H. McElwain Company cease selling any of its product to wholesale dealers and jobbers?

A. Yes, with the exception that I have made.

Q. 501. In other words, the business and output and product of the W. H. McElwain Company was brought in line with the policy of the International Shoe Company in selling its products to retail dealers in shoes exclusively?

A. Yes, sir.

Q. 502. And that is still the policy of the International Shoe Company?

A. That is still the policy; and we believe it to be a very sound one.

Q. 503. It was under date of June 4, 1923, I believe, that the International Shoe Company made alternative offers [fol. 124] to the W. H. McElwain Company for the purchase of its assets, was it, Mr. Rand?

A. Yes, sir.

Q. 504. And one of those offers was accepted, was it?

A. Yes, sir.

Q. 505. When was that offer accepted?

A. To the best of my recollection, June 20th.

Q. 506. Did you have a telegram from Mr. King notifying you of the acceptance?

A. I do not recall. My statement of June 20th is based on the documents that I read yesterday, when I got definitely fixed in my mind June 20th as the date of the acceptance of that offer.

Q. 507. You showed me yesterday a telegram from Mr. King advising that the offer had been accepted?

A. I do not recall that telegram.

Mr. Blake: this is probably the copy you have reference to, colonel.

Mr. Brindley: Read the question.

[Question read by reporter.]

A. I did have such a telegram.

Q. 508. What was the date of that telegram?

A. June 20th, 1923.

Q. 509. Just read it to the reporter, please.

A. Dated Boston, Massachusetts, addressed to F. C. Rand, President of the International Shoe Company, St. Louis, Mo. "Stockholders meeting concluded; no opposition; deeds passed. Financial transactions take place tomorrow morning New York. Everything proceeding on schedule. Stanley King."

Q. 510. That refers to the offer of June 4, 1923?

A. Yes, sir.

Q. 511. What is the exact amount which the International Shoe Company paid the W. H. McElwain Company for the assets, plants and properties?

A. $4,063,125.89.

Q. 512. Was that amount paid by the International Shoe Company to the W. H. McElwain Company?

A. Yes, sir.

Q. 513. When was it paid?

A. According to my best recollection, either on June 20th or 21st, 1923.

Q. 514. Prior to that time had the International Shoe [fol. 125] Company been paid for the stock of the W. H. McElwain Company which it sold?

A. I think not.

Q. 515. Was the International Shoe Company ever paid anything for its stock in the W. H. McElwain Company?

A. Yes, sir.

Q. 516. When?

A. As I recall, either on June 20th or 21st, 1923.

Q. 517. How much did the International Shoe Company receive for the stock of the W. H. McElwain Company which it sold?

A. $4,061,094.14.

Q. 518. From whom did the International Shoe Company receive that amount?

A. From the Bennett, Limited.

Q. 519. Did it actually receive that in money?

A. Do you mean in coin?

Q. 520. Yes, coin of the realm or a check?

A. Yes, it received a check.

Q. 521. In a check?

A. Yes, sir.

Q. 522. What disposition was made of that check?

A. I have no personal knowledge. I know in a general way we received a check—and I am not speaking now from personal knowledge about those transactions, because I did not personally participate in them, although——

Q. 523. Is this true: Did the Bennett, Limited, pay the International Shoe Company the sum of $4,061,094.14 for the stock of the W. H. McElwain Company owned by the International Shoe Company?

A. It did.

Q. 524. Did the International Shoe Company pay the W. H. McElwain Company the actual sum of $4,063,125.89 for the plants, property and assets of the W. H. McElwain Company?

A. It did.

Q. 525. That was not just a mere bookkeeping transaction, was it?

A. It was not a bookkeeping transaction. It was an actual, bona fide transaction; and I am testifying positively

about it from the standpoint of our records, although I did not personally handle that.

Q. 526. What made the difference in the two sums? The difference between the amount that the Bennett, Limited, paid the International Shoe Company for the stock which [fol. 126] the International Shoe Company owned and the amount which the International Shoe Company paid W. H. McElwain Company for its plants, property and assets?

A. I think that the difference was occasioned by some outstanding stock which we did not have in our possession; that is an impression. This transaction was over a year ago and not handled by me personally.

Q. 527. Who knows about that?

A. Mr. Stanley King is the only one I think that knows of first-hand knowledge.

Q. 528. The transaction between the International Shoe Company and the Bennett, Limited, and the transaction between the International Shoe Company and the W. H. McElwain Company all took place practically simultaneously?

A. No.

Q. 529. That is as far as payment of the money was concerned, isn't it?

A. That is not what you asked me.

Q. 530. Was the sale of the stock to the Bennett, Limited, by the International Shoe Company and the purchase by the International Shoe Company of the assets of the W. H. McElwain Company practically simultaneously?

A. No.

Q. 531. What was the difference in them?

A. I cannot answer that.

Q. 532. It all happened June 20th, according to dates, didn't it?

A. No.

Q. 533. Why didn't it?

A. Because the stock was sold on one day, and on an entirely different date the purchase of the assets of the company was made. The stock was sold to one party——

Q. 534. When?

A. On June 15th, as I recall from those documents that I identified.

Q. 535. He was not authorized to carry it through the Bennett, Limited, until the 19th?

A. You are mistaken in that. He was authorized by me over the telephone on the date that I specified yesterday, to go ahead with the plans he had in mind, and was given carte blanche authority by me as president of the company to take that action,—take whatever action he had in mind. Mr. King was a respected associate of our company and has handled many big transactions for the company.

Q. 536. And he was then given blanket authority to handle [fol. 127] this four-million-dollar transaction?

A. Yes; not to handle a four-million-dollar transaction, but to handle a transaction as it developed—to handle the transaction that we were discussing over the telephone.

Q. 537. Which was the sale of the stock?

A. Yes, it resulted in this.

Q. 538. That transaction you discussed with him over the 'phone was the sale of the stock of the W. H. McElwain Company and the purchase of the assets of that company?

A. No.

Q. 539. What was that transaction you discussed with him over the telephone?

A. That was a sale of the stock?

Q. 540. Solely and alone?

A. Yes, sir.

Q. 541. There was nothing said about the acquisition then of the assets?

A. No, sir.

Q. 542. Had you or the International Shoe Company decided at that time that you would not acquire the assets of the W. H. McElwain Company?

A. No, sir, we had not.

Q. 543. You then still expected to acquire them?

A. I think I can answer that "yes."

Q. 544. Of course that was part of the transaction, wasn't it, to acquire the assets of the W. H. McElwain Company?

A. No.

Q. 545. Wasn't that the understanding all the way through?

A. No. I am making this point which I told in my own way yesterday was a full and completed outline of all the transaction. When Mr. Blake reached Boston after a conference with Mr. Johnson and myself here in St. Louis,

Mr. King took up with him some details that he had been working out independent of any one officer of the International Shoe Company and entirely without their knowledge.

Q. 546. Who did that?

A. Mr. Stanley King. He took up with Mr. Blake, as related to me by Mr. King in his telephone conversation of that day or the day following—the day Mr. Blake arrived in Boston he then said to me that he had an offer for this stock.

Q. 547. Did he tell you how much?

A. I do not recall that he did.

[fol. 128] Q. 548. Did he tell you who it was from?

A. I do not know whether he did or not. He may have or he may not have done so. Had he told me it would not have meant anything to me because I didn't know the Bennett, Limited.

Q. 549. Was the telegram from Mr. Stanley King which you read a few moments ago the first information you had that the assets, plants and properties of the W. H. McElwain Company would be sold and transferred to the International Shoe Company?

A. I will answer that we have been discussing now the sale of the stock.

Q. 550. You can answer that question either yes or no, cannot you?

A. That was the first information, as I recall it.

Q. 551. When you authorized Mr. King to sell the stock of the W. H. McElwain Company you had no knowledge or information at all that the assets, plants and properties of the W. H. McElwain Company would be sold to the International Shoe Company, did you?

A. I had no knowledge of any of the details. I had no knowledge of a single detail of the transaction that Mr. King was carrying out, either in detail or the method by which that could be carried out and I tried to make that clear that in the telephone conversation I had said to him that we at this great distance from Boston could not go into the details, and we would leave the matter for him and Mr. Blake to work out.

Q. 552. Just exactly what was the purpose of these transactions with Bennett, Limited?

A. To divest the International Shoe Company of the stock that we had acquired from the W. H. McElwain Company.

Q. 553. What led you to that conclusion—to divest yourself of the stock of the W. H. McElwain Company?

A. We were trying earnestly and sincerely to meet the views of the Federal Trade Commission.

Q. 554. Which were as you understood them to be what?

A. They had served on us a complaint against the acquisition of the stock of the McElwain Company and we were earnestly and sincerely trying to divest ourselves of a feature that they had considered objectionable.

[fol. 129] Q. 555. And that was the sole reason?

A. No.

Q. 556. Then what was the other purpose of this transaction?

A. We had been intending to divest ourselves all the time of the stock interests in the McElwain Company because we had never regarded it as being any essence of the trade between them and ourselves, and the correspondence between myself and Mr. King about the liquidation of the McElwain Company and the correspondence and conversation between him and Mr. Blake is clear evidence that the International Shoe Company expected to operate that company as a branch of its business with notice to the entire world that it was a branch of the International Shoe Company, just as are all of these other branches.

Q. 557. That is true, and I agree with you thoroughly; now, was it the purpose of the International Shoe Company to acquire the property, plants and assets of the W. H. McElwain Company?

A. Yes, that was the purpose; yes.

Q. 558. And, as stated a moment ago, you had been willing all the time and ready all the time to divest yourself of the stock of the W. H. McElwain Company?

A. That is true.

Q. 559. All that you wanted was to retain for the International Shoe Company the plants, properties and assets of the W. H. McElwain Company?

A. Plus a group of men in whom we had confidence and for whom we had a genuine respect.

Q. 560. You wanted to give that consideration, and it is well, but the main, underlying motive and principle of these transactions with Bennett, Limited, and in divesting yourself of the stock, was to secure for the International Shoe Company the plants, property and assets of the W. H. McElwain Company, wasn't it?

A. No.

Q. 561. Was the sole purpose in the deal with Bennett, Limited, to divest the International Shoe Company of the stock of the W. H. McElwain Company?

A. I think the main purpose was to do that and to try to meet the views of a complaint then, as we would do now.

Q. 562. What was the secondary consideration?

A. Well, we hoped by meeting the views of the Federal [fol. 130] Trade Commission, that there would be no further following up of a technical complaint in which we had never any consciousness of error, either then or now.

Q. 563. It was your purpose then to get rid of the stock of the W. H. McElwain Company and acquire the assets, plants and properties of the W. H. McElwain Company and avoid by that method a violation of the Clayton Act?

A. The Federal Trade Commission, if I recall the dates correctly, had asked us to make answer on July 7th, and the complaint served on us by the commission hastened us in a thing that we would have done whether complaint had been issued or not, and we wished then, and wish now, to be in harmony with their views prior to our answer, if we could do so in a right way.

Q. 564. There was no thought of divesting yourself of the stock of the W. H. McElwain Company for the sum of $4,061,094.14 and close the transaction completely there, was there?

A. In the relations with the Bennett, Limited, I testified to all that I know personally and some things that I didn't know personally that I got by absorption because of contact with it. I have just stated that we hoped to get in accord with the commission's point of view before July 7, 1923.

Q. 565. Can you tell me right now, in round numbers, approximately what the International Shoe Company gave for the stock of the W. H. McElwain Company?

A. In round figures?

Q. 566. Yes, approximating them as nearly as you can.

A. I think it was nine and one-half million dollars. Are you talking about the original trade?

Q. 567. The original trade with the McElwain stockholders?

A. I think it was nine and a half million dollars.

Q. 568. So that beginning at least May 1?, 1921, the International Shoe Company gave $9,500,000 in money and stock for the capital stock of the W. H. McElwain Company, didn't it?

A. We did it through that medium, but I hope that I may not be misunderstood that the only interest we ever had in the acquisition of the McElwain Company was to buy its assets.

[fol. 131] Q. 569. That is true, say, in May, 1911, [1921] you gave practically $9,500,000 for this capital stock, isn't it?

A. Yes, sir.

Q. 570. Then in June 1923 you sold that capital stock for $4,061,094.14?

A. Yes, sir.

Q. 571. Was this stock sold in June 1923 for the sum of $4,061,094.14 without any understanding or agreement that you would purchase from the W. H. McElwain Company its plants, property and assets?

A. Without any agreement—

Q. 572. (Interrupting.) Or understanding.

A. —or understanding, so far as my knowledge goes.

Q. 573. Do you know whether there was an agreement or understanding with anyone else representing the International Shoe Company?

A. I do not.

Q. 574. Would you ordinarily, as president of the International Shoe Company, sell property for which you gave $9,500,000 for the sum for which you sold the stock of W. H. McElwain Company to Bennett, Limited?

A. Ordinarily?

Q. 575. Yes.

A. No; I think I made a bad trade. I do not do it ordinarily.

Q. 576. You would not do it any other time except in this particular instance?

A. You may be thinking of one thing and I may be thinking of another.

Q. 577. I am wondering why you bought stock at $9,500,000 and approximately two years afterwards sold it for $4,000,000?

A. I can answer that very clearly. I testified this morning that in eighteen months the working capital of the McElwain organization had shrunk approximately $13,000,000.

Q. 578. Immediately after receiving the sum of $4,061,-094.14 for the capital stock of the W. H. McElwain Company the International Shoe Company paid out the sum of $4,063,125.89 for all of the assets, plants and properties owned by the W. H. McElwain Company, didn't it?

A. Yes. Not immediately afterwards—I cannot testify as to those dates. I have testified to the date when payment was made.

Q. 579. How much money did the International Shoe [fol. 132] Company pay out for the acquisition of the plants, properties and assets of the W. H. McElwain Company?

A. In 1921?

Q. 580. I am talking now about the plants and assets.

A. $4,063,125.89.

Q. 581. That is what the International Shoe Company actually paid out?

A. Yes.

Q. 582. How much did it actually receive from Bennett, Limited?

A. $4,061,094.14.

Q. 583. What was the first transaction, the payment by the International Shoe Company to the W. H. McElwain Company or the receipt from Bennett, Limited?

A. The sale of the stock was the first transaction to the Bennett, Limited.

Q. 584. And then the next one was the purchase of the assets?

A. From the McElwain Company.

Q. 585. What is the difference between the two amounts?

A. $2,031.75.

Q. 586. Is that what it cost the International Shoe Company to acquire all the assets, plants and properties of the W. H. McElwain Company?

A. No.

Q. 587. All it cost then in June 1923, isn't it?

A. It is all the additional cost.

Q. 588. What do you mean by additional cost?

A. I mean that in the acquisition of the company that we sustained substantial losses——

Q. 589. You are speaking now of the stock transaction, aren't you?

A. No; I am speaking of the losses we took on the assets of the company.

Q. 590. I am speaking now of the actual purchase; so far the actual purchase cost the International Shoe Company, to purchase all the assets and plants and properties of the W. H. McElwain Company, the sum of $2,031.75?

A. No, sir; we paid $4,063,125.89 for the assets of the company.

Q. 591. And received how much for the stock which you sold at the same time or immediately preceding?

A. We had two transactions; in the sale of the stock we [fol. 133] received from the Bennett, Limited, $4,061,094.14. We paid out to the McElwain Company, for the assets of the McElwain Company, $4,063,125.89.

Q. 592. Which makes a difference of $2,031.75?

A. Yes, sir.

Q. 593. I wish you would explain to me, exactly and briefly, why this transaction with Bennett, Limited, in reference to the sale of the stock and the purchase of the assets of the W. H. McElwain Company.

A. I cannot explain a feature of the trade except as related to me by Mr. King. Prior to this time I had never heard of the Bennett, Limited.

Q. 594. Did you ever see anybody connected with it?

A. Not up to date. I do not know a man connected with it.

Q. 595. Do you know where they do business?

A. Yes.

Q. 596. Where?

A. In Canada.

Q. 597. Did you ever hear of them doing any business in the United States besides this transaction?

A. No.

Q. 598. Do you know whether they have any authorized agent or employee in the United States?

A. I do not know; I do not know anything about Bennett, Limited, except that they gave us a check which we found by cashing it to be good.

Q. 599. And they gave you a check which you say was good?

A. Yes; on which we collected returns, without discount.

Q. 600. And then to whom did you give the check of the International Shoe Company for the assets of the W. H. McElwain Company?

A. To Mr. Stanley King.

Q. 601. To whom was it payable?

A. W. H. McElwain Company.

Q. 602. Who drew that check?

A. I do not know. The check itself will be evidence.

Q. 603. In other words, you do not recall right now?

A. But if we get it, cannot I make it positive instead of a presumption?

Q. 604. You might do that, if you wish.

A. I do not know who signed the check; I might have signed it and I might not have signed it.

Q. 605. You stated during the forenoon you wrote a letter to Mr. Stanley King, which you offered here in evidence, and you authorized him to go to Washington and confer with the Federal Trade Commission?

A. Yes.

[fol. 134] Q. 606. After he had visited Washington he came here to St. Louis and conferred with you and Mr. Blake and perhaps other members or other officers of the International Shoe Company; is that correct?

A. Yes, that is correct.

Q. 607. And it was then that he was instructed as to the wishes of the International Shoe Company in divesting itself of the stock of the W. H. McElwain Company and retaining its assets?

A. No, colonel; we were naturally exercised about a complaint which came as a clap of thunder; we were not conscious of being in violation of any rulings of the Federal Trade Commission, and the suggestion that Mr. King go to Washington—we had heard, just how I do not know; it had

not been issued—but that a complaint was to be issued. Mr. King spent several years in Washington in very responsible war work there. He was private secretary to Secretary of War Baker, and he knew a great many people in Washington and was held in high esteem. We asked him to go to Washington and see if this rumor were true. He came to St. Louis and told to us his experience in Washington. I hesitate to try to remember now, after more than a year, just what he told us. I did not know the man personally that he saw. He is here and will testify about his visit to Washington. Then, when the complaint did materialize some few days afterwards, probably within a week after Mr. King had been down there, the International Shoe Company interested, and vitally interested, in avoiding, if it could, the unfavorable impression that a complaint of this kind makes against a corporation. We believe one of the biggest assets of our company is based on the good-will that the company has built up in twenty-five years of honest and sincere relations with all of the people with whom we do business, and a complaint of this kind, widely disseminated by the press, is not conducive to building up good-will, and, with a very definite consciousness that no motive but the best was behind this trade, we wished to avoid that.

Q. 608. I am perfectly willing to concede that the International Shoe Company acquired the stock of the W. H. McElwain Company without any thought of violating the [fol. 135] law, and that you and other officers of the International Shoe Company in your transactions in reference to the acquisition of the stock of the W. H. McElwain Company were actuated by perfectly proper motives, I do not question at all. But the thing I am interested in now, and on which I want you to enlighten me, is this peculiar transaction with Bennett, Limited. Tell me this, if you can: You testified yesterday that the main purpose was to secure the assets, property and plants of the W. H. McElwain Company and cared practically nothing at all for its stock, and was ever willing to throw it away or burn it up but——

A. Let me add, throw it away, or burn it up, in the course of events after we had made the proper transfers on our books—and then I qualified that by testifying that by hav-

ing a few outstanding shares of stock to do that disorderly would be a dangerous proposition; I testified to that.

Q. 609. You would take care of all of the stockholders?

A. I testified to that.

Q. 610. After this complaint was issued, and you knew that the International Shoe Company owned all of the stock of the W. H. McElwain Company except a few shares, why did you not have the W. H. McElwain Company deed, transfer and convey to the International Shoe Company all its plants, properties and assets, without going through this performance with the Bennett, Limited?

A. I answered that right fully.

Q. 611. Tell me now. I never have understood it, and do not yet.

A. I testified yesterday, and reiterate today, that from the standpoint of laymen, and after we had tried to sell this stock of the McElwain Company to a banker in New York, and he wished us to enter into a collateral agreement to repurchase from him the assets of the company, that we then declined to do that as a subterfuge and dropped the transaction.

Q. 612. Then you accomplished the same thing with Bennett, Limited, didn't you?

A. I am trying to answer your other question.

Q. 613. Cannot you answer the other one?

Mr. Blake: I would like for him to have an opportunity to answer your first question.

[fol. 136] Mr. Brindley: He can answer my question, and when we get through you can ask him anything you want to.

A. I think we accomplished quite a different result.

Q. 614. The whole transaction with Bennett, Limited, amounted simply to this, didn't it, that the International Shoe Company divested itself of the stock of the W. H. McElwain Company and then immediately secured all the plants, properties and assets of the W. H. McElwain Company, didn't it?

A. Not immediately.

Q. 615. How much time elapsed? One day?

A. Not within a day.

Q. 616. That is all there was to the transaction, wasn't it? Just this: that the International Shoe Company divested

itself of the stock of the W. H. McElwain Company and then secured all the plants, properties and assets of the W. H. McElwain Company?

A. And after we had divested ourselves of the stock of the McElwain Company we later purchased from the McElwain Company the properties of the McElwain Company.

Q. 617. That is all there was to the transaction, wasn't it—just divesting yourself of the stock and the acquisition of the plants and the properties and the assets?

A. These questions, colonel, that both of us may be logical in it, you asked me if we did not accomplish the same results as we would have accomplished under the plan that we declined.

Q. 618. Yes.

A. And I said no, because in one case there was demanded of us an agreement to buy the plants, properties and assets——

Q. 619. Which you did not give?

A. —which we did not give.

Q. 620. And in the other case you did buy the plants, properties and assets without an agreement; is that true?

A. In the other case, when we sold to the Bennett, Limited, the stock of the McElwain Company, so far as I know there was no agreement and no suggestion about an agreement they would at a later date sell to us the plants, properties and assets of the McElwain Company.

Q. 621. So then it was very much of a surprise to you to hear the next day they did sell the plants, properties and [fol. 137] assets to the International Shoe Company, was it?

A. No; that was not nearly as much a surprise to me as the complaint of the Federal Trade Commission was.

Q. 622. You testified this morning when Mr. King returned from Washington, or came to St. Louis from Washington, you were advised of a ruling of the Federal Trade Commission in reference to the acquisition of stock and the purchase of assets; was it at that time that you learned of this ruling of the Federal Trade Commission that you mentioned this morning?

A. Which one? I mentioned sections 8 and 7.

Q. 623. Eight is the only one I remember; the one you read into the record.

A. I knew about that ruling, from general information of reading, without any legal training at all, but in making this trade I think it is a fair statement to say that no one of us ever thought about the Federal Trade Commission. We were going along in a straight-forward business way.

Q. 624. You mean in the acquisition of the stock?

A. The trade we made with McElwain.

Q. 625. In your trade with the Bennett, Limited, you did think of these rulings you did mention this morning?

A. Yes, the complaint of the Commission was——

Q. 626. Already issued?

A. It was issued, and we were anxious to meet the views of the Federal Trade Commission in a way that would be satisfactory to them.

Q. 627. And, as you testified yesterday, you wanted to comply with the ruling of the Federal Trade Commission?

A. Yes, sir.

Q. 628. And you mean by that ruling number 8 which you read into the record this morning?

A. Yes. We think we have complied with ruling 8.

Q. 629. In pursuance of that policy to comply with the ruling, a plan was devised then to sell the stock and acquire the assets; isn't that true?

A. It is true that after the complaint came to us from the Federal Trade Commission we were thinking quite a little of how we could answer satisfactorily and honestly the complaint of Federal Trade Commission; and that is heavy on my mind and heart now.

[fol. 138] Q. 630. And, as you testified yesterday, you were willing to do anything——

A. That is honest and straight——

Q. 631. —to meet the views of the Federal Trade Commission provided you could retain the properties and assets and plants of the W. H. McElwain Company; isn't that true?

A. Did I testify to that statement, you mean?

Q. 632. That is my recollection of it substantially.

A. I think it is very natural for us to wish to retain the assets that we originally intended to acquire.

Q. 633. It is.

A. Very natural, and very natural now. We have that desire. That is a natural desire; and we wanted to do that thing; and we would have been unwise not to have done it.

Q. 634. I can readily see you had that desire. What I am trying to do is to get you to say it again.

A. I have said it.

Q. 635. So that was the purpose of you and the other officers of the International Shoe Company in the conferences you testified about yesterday, wasn't it?

A. Yes, that was the purpose of Mr. Blake leaving St. Louis and going to Boston, to satisfactorily meet the views of the Federal Trade Commission in the complaint that they had filed against the International Shoe Company.

Q. 636. And you mean by that for the International Shoe Company to divest itself of the stock of W. H. McElwain Company but retain the assets, plants and properties of that company?

A. Those thoughts were in my mind, and necessarily in the mind of any man who had the responsibility of the International Shoe Company on his shoulders, even a partial responsibility of it.

Q. 637. And that was the main motive actuating you and other officers of the International Shoe Company in all of the transactions subsequent to the issuance of the complaint, wasn't it?

A. I feel that all of the activities that I entered into in connection with this are the results of the complaint filed against us by the Federal Trade Commission, and I testified yesterday of the laymen's conference between Mr. Johnson, Mr. Blake and myself, and that testimony I can repeat if it will help any, and Mr. Blake went to Boston following that conference. We were then advised by Mr. King of something entirely new to us, that we had never [fol. 139] anticipated, and after a telephone conversation in which he indicated that he could sell this stock or had an unsolicited offer for the purchase of this McElwain stock from the Bennett, Limited, we then gave him carte blanche authority to go ahead and consummate the sale.

Q. 638. And that was all the authority he had then—to consummate the sale of the stock?

A. That was all we were discussing with him.

Q. 639. Was that all of the authority he had?

A. He had pretty full authority from me. I just said to them: "We cannot go any further in it. If you and Mr. Blake concur in the matter, go ahead and work it out."

Q. 640. Well, do you mean to say this, then: When the stock of the W. H. McElwain Company was sold to Bennett, Limited, there was no thought or expectation of acquiring, by the International Shoe Company, the plants, property and assets of the W. H. McElwain Company?

A. I cannot testify at all on that, colonel. I think I can answer the question and you can follow it up later with the examination of Mr. King, that when we gave Mr. King unlimited authority to go ahead with this matter we had confidence both in his integrity and in his ability, and if he had acted unwisely it would have been a surprise and disappointment, and we ran that risk in giving him this authority and, as right or otherwise, we would have backed him up in whatever he had done.

Q. 641. He knew the wishes of you and other officers of the International Shoe Company in regard to acquiring the property and assets of the W. H. McElwain Company, didn't he?

A. He was familiar with the expressed wishes of Mr. Johnson and myself along a different line from that he did take, and without shifting responsibility when I said to him that I would authorize him to go ahead with the transaction that he had mentioned over the long distance 'phone, I had to share with him the responsibility of his action, because I was the man who gave him the authority.

Q. 642. As stated by you in the answer of the International Shoe Company to the complaint in this proceeding, the International Shoe Company, upon receipt of the com-
[fol. 140] plaint, took the necessary steps to remedy what it considered to be or was advised to be a technical violation of the Clayton Act?

A. We took the steps we believe correct; yes, sir.

Q. 643. And those steps to remedy what you considered a technical violation were to cause the International Shoe Company to divest itself of the stock of the W. H. McElwain Company, were they?

A. Not what we considered a technical violation; what the Federal Trade Commission considered a technical violation.

Q. 644. But the steps you took to remedy that technical violation were to cause the International Shoe Company to divest itself of the stock of the W. H. McElwain Company?

A. Yes, sir.

Q. 645. That was the sole thing that the International Shoe Company undertook to do to remedy that technical violation, was it?

A. I think so.

Q. 646. There was no effort or intention on the part of you or the International Shoe Company to restore conditions as they existed prior to May 11, 1921, were there?

A. Immediately prior to that?

Q. 647. Yes.

A. Absolutely not.

Q. 648. There was no attempt or effort or purpose to restore the competitive conditions which existed between the International Shoe Company and the W. H. McElwain Company on and prior to May 11, 1921, was there?

A. We did not recognize any competitive conditions with the W. H. McElwain Company.

Q. 649. Was there any effort then to restore the condition which existed in the shoe business between the International Shoe Company and the W. H. McElwain Company prior to May 11th, 1921?

A. No. Those conditions were so very bad we were very thankful that they were passed. We felt that we had made a great contribution in adjusting them.

Q. 650. There was no effort then in any way to remedy this technical violation, as you were advised, except to go through the formality of having the International Shoe Company divest itself of the capital stock of the W. H. McElwain Company?

A. None, because the commission advised us that was the only violation we had. We felt, after looking into the rulings of the commission, we had a perfect right to acquire [fol. 141] the properties of the company, and the commission was complaining that we had acquired the stock of the company.

Q. 651. Your position, and that of the International Shoe Company, then, was simply this: If it was a violation of the law to acquire the stock of the W. H. McElwain Company you wanted to remedy that situation?

A. Yes.

Q. 652. And if, as you had been advised, it was the ruling of the Federal Trade Commission it was not a violation of the law to acquire the plants, property and assets of the company, you wanted to acquire those plants, properties and assets?

A. Yes.

Q. 653. Wasn't that the whole explanation of all of the transactions with Bennett, Limited, and with the W. H. McElwain Company subsequent to the issuance of the complaint?

A. Yes, as the dates will show.

Q. 654. Examine the document which I hand you, and tell me if you can identify that?

A. This is a document dated May 17, 1921, and appears to be a copy of an interview that I gave to the Boston News Bureau on that date.

Q. 655. That is a copy of the statement you made?

A. A copy of the statement that I made.

Q. 656. In reference to the acquisition of the W. H. McElwain Company stock?

A. In reference to the merger of the W. H. McElwain Company with the International Shoe Company; that is the heading there.

Q. 657. This is dated May 17, 1921, and was just shortly after the International Shoe Company acquired the stock of the W. H. McElwain Company, as you have heretofore testified?

A. Yes, sir.

Mr. Brindley: We offer this document in evidence as Commission's Exhibit Number 7, and ask that it be received as an exhibit.

Examiner Bennett: It will be received as Commission's Exhibit Number 7, witness Rand, consisting of two pages.

[Said document was thereupon marked, for identification, "Commission's Exhibit No. 7, Witness Rand", was [fol. 142] received in evidence and is forwarded herewith.]

Mr. Brindley: That is all.

Recross-examination.

By Mr. Blake:

X Q. 658: In the discussion as to the amount paid for the assets and properties of the W. H. McElwain Company in June 1923, the figure as given has been $4,063,-125.89. Does that represent the gross assets of the W. H. McElwain Company, or merely on a net basis?

A. That was the net basis.

X Q. 659. Explain that figure, in other words.

A. It is difficult for me to explain in detail that figure, Mr. Blake. It has been a year since I have seen that.

X Q. 660. Did you not make the proposition to buy these assets in the alternative, one on the gross basis and one on the net basis?

A. Yes, sir.

X Q. 661. What do you mean by the net basis?

A. Basis after depreciation is taken off.

X Q. 662. What about the liabilities?

A. Necessarily the liabilities would be deducted.

X Q. 663. By that you mean after deducting its liabilities this net proposition was figured on the net assets, and was any amount added to the showing as to the net assets in the offer to W. H. McElwain Company?

A. I will have to refresh my memory on those offers. Here is a copy.

X Q. 664. Read the third paragraph of that, Mr. Rand [handing witness Respondent's Exhibit No. 18].

A. The sum of $4,063,125.89 was arrived at by taking the total net values of the McElwain properties and assets, as shown by their books and by an audit made thereof by Marwick, Mitchell & Company as of April 30, 1923 ($2,563,-125.89) and adding to that the sum of $1,500,000.

X Q. 665. The attorney for the commission has asked you if any effort was made by the International Shoe Company to restore the W. H. McElwain Company to the conditions which existed prior to May 11, 1921; that is, if any such effort was made after the International Shoe [fol. 143] Company had disposed of its stock in the W. H. McElwain Company.

Mr. Brindley: That is not my question.

Examiner Bennett: At any time, I think it was.

Mr. Blake: I understood you had just followed this up after the stock transaction, and I took it that is what you meant; evidently I did not understand you.

X Q. 666. Would it have been practically possible for the International Shoe Company to have restored the W. H. McElwain Company to those conditions?

A. It would have been impossible and deplorable to have done so. A great many of the men formerly connected with the McElwain Company had gone out into other industries, some of them manufacturing shoes, some of them in the leather business—in the upper leather business, and others in the sole leather business and a variety of different kinds of interests.

Mr. Blake: That is all.

Examiner Bennett: I have just a few questions to ask.

By Examiner Bennett:

Q. 667. Mr. Rand, what is the organization now under the International Shoe Company of the Roberts, Johnson & Rand Company, for instance? What I want to find out is what is the organization of your five selling agencies in St. Louis?

A. They are just selling agencies of the International Shoe Company.

Q. 668. They are merely names, are they?

A. They are names—Roberts, Johnson & Rand branch of the Inernational Shoe Company.

Q. 669. They are simply branch names or branch offices?

A. Just like you would get some abstract name; we use that name and we formerly used that name. There is no Roberts, Johnson & Rand Shoe Company. The salesmen employed by this branch go out and sell shoes for Roberts, Johnson & Rand branch of the International, and when those shoes are invoiced they are invoiced by the International Shoe Company as coming from the Roberts, Johnson & Rand branch of the International Shoe Company; and that is true of Peters and the others.

[fol. 144] Q. 670. Are there any trade-marks or anything of that sort connected with those names?

A. Yes, there are.

Q. 671. That is the reason especially for carrying them instead of the name of the International Shoe Company, is it?

A. Yes, sir.

Q. 672. Has the McElwain Company been dissolved as a corporation?

A. I do not know.

Q. 673. You have not yet secured the right to use its name, or have you?

A. We are not using its name. I do not know whether we have the right or not. I think we have the right to use the name.

Q. 674. It provided in the contract you could do it under certain circumstances?

A. I think we have a right to use the name but we are not using the McElwain name.

Q. 675. Can you tell me whether it has been dissolved or not?

A. I cannot tell you; I do not know. You are talking about the McElwain corporation of Massachusetts?

Q. 676. Yes.

A. I do not know. We have never had any interest in the McElwain Company after we sold its stock.

Q. 677. As I understood you, you had that interest, that is, that there was a clause in your contract giving you a right to the use of its name after it was dissolved and discontinued?

A. I think we have that right. We are not using it, that I know of.

Q. 678. As I understand it, up to June 1923 the McElwain Company continued a sort of separate corporation, did it?

A. They did in the abstract but we were operating the selling branches as a part of the International Shoe Company.

Q. 679. But they had ownership of certain definite properties, did they?

A. That is, there was ownership of certain definite properties by the McElwain Company, as a corporation, was there?

A. I think so; yes; that is my recollection of it.

Q. 680. As I understand it, you advanced to the McElwain Company during that time about $11,000,000, during the first year. What arrangement was made at the time of the sale of the stock to conserve that advance or advances of that sort?

A. The McElwain Company owed us that much money on our books. It showed up as an obligation of the McElwain [fol. 145] Company to the International Shoe Company.

Q. 681. If you had made that sale without getting back the assets would there have been a loss in that connection of the difference between the selling price of about $4,061,000 and odd dollars and $9,470,000, the amount you paid for the stock, plus $11,000,000, the amount you advanced; would you have had a loss of something like $15,000,000 on the proposition?

A. I think not. You see we actually sustained a heavy loss in the purchase of the McElwain Company, independent of the sale of stock or the purchase of the assets from the McElwain Company; or, stating it differently, we actually had that loss because we had advanced to the McElwain Company more than $11,000,000, which they if left alone could not pay us—there is no question about that.

Q. 682. Then you sold the stock for more than $5,000,000 less than you paid for it, didn't you?

A. Yes, and while those two amounts, as I see it now, have no relation to each other, we did sustain as much as that difference—we have sustained that much actual loss.

Q. 683. It would have been practically a cash loss if you had just stopped with the sale of the stock?

A. It has been up to this time a cash loss and stands today as a loss. I am not speaking of the relation of the stock. I mean we have sustained a loss up to this time—a very substantial loss.

Q. 684. Do you know whether the Bennett, Limited, exercised any act of ownership with regard to the assets of the company while it held its entire stock?

A. I do not know.

Q. 685. You know of no act of ownership, do you?

A. I know of no act.

Q. 686. Except the sale?

A. I have never had any contact with the Bennett, Limited, except through Mr. Stanley King.

Q. 687. As I understand it, one of your reasons for buying the stock originally rather than the assets, which the company were willing to sell to you, was that you wanted a live, going concern, instead of just some disorganized properties?

A. Yes, sir.

[fol. 146]. Q. 688. And that was the main reason, was it not, that you took one way rather than the other of handling the matter in the first instance?

A. Yes. Without the organization——

Q. 689. That gave you the advantage, of course, of becoming a live, going organization in that territory that that concern had been serving up to that time?

A. As I stated, they were covering New England and the north Atlantic States, where we were not selling any goods at all, and that gave us an entry into those states, and then they had some idle factory space out of which could come the production of some shoes we needed very badly.

Q. 690. About how long back was your manufacturing and sales organization working along practically its present lines? That is, the organization of the International Shoe Company?

A. We worked along similar lines, but as we became more experienced and skilled in shoe making we have covered a wider field. In the past three years we have gone more largely into the cities than we did prior to that time. Our trade prior to 1921, say January 1, 1921, was largely in the smaller towns throughout all of the United States with the exception of the northeastern part of the United States and very little in the larger cities. Take Tennessee, for instance; we are enjoying a splendid business out of Tennessee, but were enjoying a splendid business, well grounded and sound business, throughout the state. We did a very small business in the cities of Nashville and Memphis, the two large cities in the state.

Q. 691. You were doing a business then pretty generally throughout the United States in 1919, were you?

A. Yes, with the exception of the northeastern territory that I mentioned.

Q. 692. As far back as 1915 were you doing a pretty general business?

A. Yes; our business is well scattered over the south and west and northwest.

Q. 693. And, as you recollect, the McElwain Company dated back several years before you bought their stock?

A. The McElwain Company was organized in 1895. I said yesterday '96 or '97——

Q. 694. And it had been doing business much along the [fol. 147] same lines as it was in 1921 for several years?

A. They followed their general policy consistently, pretty consistently, which was catering to the city trade and to wholesalers and jobbers; and we were not doing business with jobbers and doing a very small amount of business in the larger cities.

Q. 695. The great loss in 1921 came from overloading on raw materials at high prices, didn't it?

A. Of course that is a serious trouble, and then with the precipituous drop in prices. Take finished calf skins, for instance; as purchaser for the International Shoe Company I had bought thousands of dozens of them for 22 cents a square foot; that same leather, and no better, could command as high as $1.60 a foot; and in twelve months there was a drop of $1.20 a foot in that leather.

Q. 696. When did the market turn the other way—did it turn up again on materials?

A. The market has not materially turned up yet.

Q. 697. When did it stop going down?

A. The market began to drop in the fall of 1920, and precipituously, and continued all through '21, and general confidence in values of all kinds was destroyed and there was great reluctance to buy, and the reason that our business was so active and good was we were in a fortunate position with the least possible amount of surplus on hand we could get along with, and we were able to meet, and were the first shoe manufacturers in America to reduce our prices, and we went out to a group of customers with whom we had been doing business for years with prices so low that won their confidence, and they were cheaper than they could buy them elsewhere, and our business went just contrary to the tendency of the times. In that year, when the buyers' strike was discussed in the papers and throughout the country, we showed an increase of some 25 per cent in the volume of pairs of shoes made and delivered to our customers.

Q. 698. You spoke about competition; in the shoe business are there smaller companies that confine themselves to narrow territory?

A. Yes; there are a good many shoe companies of that character.

[fol. 148] Q. 699. They sell in a limited area?

A. Yes.

Q. 700. That is the only practicable method from a business standpoint of a small company, isn't it; that is, a small company could not spread itself all over the United States with a sales organization?

A. No; they have to grow gradually and if they are growing healthfully they ought to develop from within rather than from without.

Q. 701. Start nearby and go out?

A. As you succeed then broaden your scope of operation.

Q. 702. Would you consider a company that was situated, say, in St. Paul, Minnesota—you cover Minnesota, do you?

A. Yes, sir.

Q. 703. Would you consider a company that was situated in St. Paul, Minnesota, and confined itself to your line of shoes or footwear, say, in Minnesota and Wisconsin and the Dakotas, a competitor of your company, although it did not go outside of there?

A. It would be, judge, owing to the character of shoes that they produced; and if I might supplement your statement just now, there are two classes of shoe companies that operate: One of the class that operates in a limited area because they haven't the capital with which to spread out more widely; and another one, and more numerous class, is that class of shoe companies that make a very limited line of shoes that may cover the whole United States, all of the territories that we are covering, and develop no competition with them. I have in mind while I am speaking a Brooklyn manufacturer—Garseith—manufacturers of ladies' high grade shoes. He will go into every state probably that we go into; there is absolutely no more competition between his shoes and ours than if we were not in the same business.

Q. 704. Doesn't he take part of your market for the ladies' shoes?

A. He sells his shoes for two or two and a half times as we sell our shoes for.

Q. 705. Even though he does, doesn't he take part of your market? That is what I want to get your idea about.

A. Don't you come back to the same competition between

the Rolls-Royce and the Ford car? I am very clear in my own mind about that; with regard to competition, if we were selling the same merchant as Garseith there would be [fol. 149] no hesitation whatever in opening up our samples in the same room and have him look at Garseith's on one side of the room and ours on the other.

Q. 706. If they were two and a half times there might be something in it; though, supposing there was a fifty per cent difference?

A. That would be great enough where the merchant in his own mind would not consider any competition, and that condition exists today.

Q. 707. As a matter of fact, wouldn't they as manufacturers selling at fifty per cent advance be taking some of your sales territory from you?

A. He may take some of the territory but he does not take many sales from us.

Q. 708. Wouldn't he tend to curtail your sales, to take prospective or possible customers?

A. We do not consider it so and it is not so regarded in the trade. Take Hanan; I do not believe you could get any shoe manufacturer that would say there was competition,—Hanan & Son and the International Shoe Company.

Q. 709. Is there a conscious specialization of that kind in the shoe trade, where a manufacturer, for instance, of a certain kind, an individual manufacturer, attempts to get only one class of trade, a very expensive class, another a medium class, and another a low class?

A. Yes; there are whole communities that establish standards of quality and shoes coming from a certain manufacturer are generally regarded as being of a given quality and from another manufacturer of a given quality, and not competitive against the other. They are then regarded as supplements of each other.

Q. 710. Isn't it true, or is it true, that in the whole shoe trade the same individual might buy several of those different classes?

A. That is true.

Q. 711. And isn't it true at different times they may cut out one class or another class?

A. Yes, sir.

Q. 712. I am trying to get your idea of competition. Supposing you had to meet, or there was in some part of the

United States—I believe you are selling all over the United States—a manufacturer of shoes who was able to saturate [fol. 150] a certain small territory with the line of goods that you are offering, and appeared against you nowhere else in the United States, would you consider him a competitor? Supposing as a matter of fact you had given up trying to sell in this territory because he had proved so strong in holding that territory that you do not do anything profitably in it?

A. We have never had that experience. I would not know how we felt about it. I would think we had to get busy in that territory and use more resourcefulness.

Q. 713. Would you say that under the conditions prior to the time that you took over the McElwain Company you were or were not a competitor in the New England territory?

A. We were not in there; we could not compete in New England. We were not there.

Q. 714. Would you say that you competed with concerns located in that territory? Would you say that you were competitors of the concerns located in that territory and sold exclusively in that territory?

A. No.

Q. 715. You would not?

A. No, I think not.

Q. 716. You would not view yourself as a competitor? That is all. I just wanted to get your idea.

Mr. Blake: That is all.

Mr. Brindley: That is all.

[Witness excused.]

Mr. Blake: We would like to put Mr. Johnson on out of turn.

Mr. Brindley: That is agreeable.

Examiner Bennett: You may do that. Let him be sworn.

EVIDENCE FOR THE RESPONDENT

JACKSON JOHNSON was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Blake:

Q. 1. By whom, and when, was the first approach made to you with respect to a consolidation of the International Shoe Company and the W. H. McElwain Company?

A. It was the latter part of March, 1921. The information came from Mr. W. H. Moulton, vice-president of this [fol. 151] company, who called me up at my home and said Mr. McElwain was here and would like to talk to me.

Q. 2. Mr. J. F. McElwain?

A. Yes.

Q. 3. He was president of the W. H. McElwain Company?

A. Yes. That, as I remember it, was Saturday night, and he wanted to know if Mr. McElwain could not come out to my house in the morning and have a talk with me. I told him I usually went to church, but if he could come out very early I would be very glad to take up and discuss any matters that he wanted to. I did not know at that time just what he wanted to discuss.

Q. 4. Did you have any previous knowledge of the coming of Mr. J. F. McElwain?

A. No, I did not.

Q. 5. Did you know before he arrived at your house the next morning just what the nature of his business was?

A. No, I did not. I didn't know anything about it.

Q. 6. When he arrived there what was the nature of the proposition that he suggested to you?

A. Mr. McElwain first approached me with a question of large consolidation of shoe manufacturers, mentioning several names of prominent shoe manufacturers, and I would like to be excused from mentioning them because it is probably unfair to those manufacturers to bring their names in, because I take it Mr. McElwain possibly had no authority to bring them in; but anyway he mentioned the names, I can remember very definitely, of three large manufacturers who he would like to join in an organization, and he went

so far as to ask if I would be interested in heading an organization of that kind. I told him I would not.

Q. 7. Did you state to Mr. McElwain any reason why you turned down his proposition for this big combination of large manufacturers?

A. Yes; I told Mr. McElwain that any organization of that kind would be in my opinion an unsound proposition, that it would offer no advantages to the general public, and I was not willing to go into any organization that could not offer better service or better shoes for a given price, and I felt an organization of that sort would not be an economical organization, and, therefore, we would not be interested at all in it.

[fol. 152] Q. 8. The net result of that conference was to turn down Mr. McElwain's proposition for a big combination of large manufacturers?

A. Yes; and it is my impression that nothing was said whatever about the sale of the McElwain Company or the consolidation of the McElwain Company at that time. That occurred at a subsequent conference that I had with Mr. McElwain when he came back here. He and Mr. King came back together.

Q. 9. This second conference then that you have just referred to, when did that occur?

A. I have a minute here; I presume it is legitimate for me to refer to the dates. It appears that Mr. McElwain was back here again on April 8th, about possibly ten days after the first discussion. Mr. McElwain and Mr. Stanley King were here together.

Q. 10. Where was that conference held on this second occasion?

A. That was held at the offices here of the company, in this building.

Q. 11. Was the big combination of these large shoe manufacturers with McElwain and the International discussed or mentioned in that conference?

A. Only casually, as I remember it. Then it was that Mr. McElwain took up definitely the question of taking over his company or consolidating with his company, as he put it.

Q. 12. Did he submit to you at that time any figures, tentative or otherwise, as to the condition of his company?

A. I think he submitted figures as of February 28th, a trial balance and monthly balance.

Q. 13. In a general way, what did that show as to the condition of his company?

A. It showed a very heavy liability and it showed that the company was in an exceedingly unhealthy condition. I do not say insolvent, but a very unhealthy financial condition.

Q. 14. Did they explain at that time why the company was in that condition?

A. Yes; Mr. McElwain went rather fully into the conditions that he had been confronted with, namely, that a large percentage of orders had been cancelled, a great many goods had been returned to him, they had accumulated a large [fol. 153] stock of manufactured merchandise, and had a large stock of raw material on hand, and, in addition, had contracts for the purchase of hides and leather in addition to the actual merchandise on hand.

Q. 15. Was there mentioned at that time, and did he ascribe, as one of the reasons for the condition of his company the depreciation in values and prices of materials and shoes?

A. Yes; he explained the prices and compared his prices of shoes and admitted his prices were high and he could not afford to sell them at less, otherwise it would be such a great sacrifice it would mean possibly a very serious consequence to the company.

Q. 16. What was your attitude with respect to this proposition or suggestion that was made by these two gentlemen for the acquisition of the McElwain Company?

A. I did not take any definite stand whatever on it. Mr. McElwain was rather insisting on our making some kind of a proposition. I remember I stated that Mr. Rand was away and that he was active head of the company and that I did not feel I wanted to make any proposition. Then finally, after much discussion, probably spending over two or three or four hours, I cannot remember now, Mr. McElwain asked when Mr. Rand came back if we would not come up to Boston and look over the situation there and go over it with him, and in the meantime he would be willing to submit us additional figures, and he asked if we would not

submit him figures showing our condition, and a comparison of our cost of doing business, various things that enter into a business that are necessary to arrive at a conclusion of the relative values of the company, and I told him I would and did submit to him those figures afterwards, and he submitted me quite a number of figures.

Q. 17. I hand you a document consisting of one sheet and ask you to identify it.

A. This is a letter dated April 9th, no signature or address, but I know the letter, and it is one I wrote to Mr. McElwain on that date.

Mr. Blake: We offer that as Respondent's Exhibit Number 23, Mr. Examiner.

Examiner Bennett: It is received.

[Said document was thereupon marked, for identification, [fol. 154] "Respondent's Exhibit No. 23, Witness Johnson," was received in evidence and is forwarded herewith.]

Q. 18. I ask you if Mr. McElwain did not reply to that letter of April 9th, and if you can identify those sheets I have just handed you as the reply you received from Mr. McElwain?

A. I can.

Mr. Blake: We offer that as Respondent's Exhibit Number 24.

[Said letter was thereupon marked, for identification, "Respondent's Exhibit No. 24, Witness Johnson," was received in evidence and is forward herewith.]

Q. 19. I will ask you to read that letter, Mr. Johnson, for the benefit of the examiner.

[Witness reads Exhibit No. 24.]

Examiner Bennett: Please note that the last exhibit consists of five sheets. There is attached to Exhibit Number 24 a report of treasurer to board of directors covering nine months' operation.

Q. 20. Mr. Johnson, I hand you another sheet and ask you if you can identify that as statement of February 28, 1921, which was enclosed in this letter?

A. This seems to be.

Q. 21. It is?

A. This seems to be; yes.

Mr. Blake: We offer that as Respondent's Exhibit Number 25, Mr. Examiner.

Examiner Bennett: It will be received.

[Said statement was thereupon marked, for identification, "Respondent's Exhibit No. 25, Witness Johnson," was received in evidence and is forwarded herewith.]

Q. 22. Mr. Johnson, in this letter from Mr. McElwain, it was written at a time when Mr. McElwain was trying to make a sale of his company to you, wasn't it?

A. Yes, sir.

Q. 23. It contained rather rosy and beautiful views as to their condition and their expectations?

A. Yes, sir.

Q. 24. Did the subsequent facts bear out the expectations of Mr. McElwain as appears in that letter?

A. They did not.

Q. 25. Do you remember the date that Mr. Rand returned from Mexico, Mr. Johnson?

A. I think it was about April 17th, or somewhere around there.

[fol. 155] Q. 26. You and Mr. Rand then subsequently went to Boston in response to this invitation from Mr. McElwain?

A. Yes, sir.

Q. 27. In the conference at Boston just state the stage to which you progressed with respect to arriving at a trade.

A. This conference was held between myself and Mr. Rand and Mr. Moulton, representing the International Shoe Company, and Mr. McElwain and Mr. King, representing the McElwain Company, and Mr. James J. Storrow, representing the preferred stockholders. This discussion extended over, I believe, three days, the 25th, 26th and until the afternoon of the 27th. In the meantime we had developed some other facts. Those were facts admitted I believe by Mr. King on direct inquiry and made to him as to what in his opinion would be the present showing of the company. Mr. King stated that the showing would not be as good—I think Mr. King rather hesitated. He finally, though, indicated to me that the loss would be—I do not remember—two or

three million dollars—an inventory and appraisal would show a two or three million dollar loss, on inventory. I might say, however, a very strong effort had been made by Mr. Elwain and Mr. King and also by Mr. Storrow, I think, to have us make a proposition, a definite propositon, of what we would do, and we declined absolutely to make a proposition, and we stated we would not consider making any proposition, and I know I remember using one expression that the company was not prepared to buy a pig in a poke and not prepared to consider any proposition whatever without appraisal, inventory and an audit. I had been invited by Mr. Storrow to come down to his office in the latter part of the afternoon of the 27th; that he had had an expert there to take our figures and the McElwain figures and analyze them. I went down there, and Mr. Rand went down. I think, however, as I remember it, I only discussed the matter with Mr. Storrow in his office. He submitted these figures, and they appeared to me so very absurd I did not give them any real consideration, because in the figures he had proven that the McElwain Company had done very much better than the International. Of course, it takes a pretty strong figurer with the condition that confronted the McElwain Company and the conditions that confronted the [fol. 156] International Shoe Company that would make figures that would appear to show that result. Nevertheless, I will have to give credit to Mr. Storrow for being a fine figurer. Anyway, we still held our proposition. Mr. Rand and I had gotten our reservations to New York. We left that afternoon without any conclusions having been arrived at, and without any definite proposition having been made; and on the train was Mr. King——

Q. 28. Before you got on the train, Mr. Johnson, while you were in Boston did you tell these gentlemen you thought they were broke?

A. Yes, I did.

Q. 29. Did you tell them in fact that while they had made money in former years they had lost practically all of it in the year just preceding?

A. Lost all they made, and then some.

Q. 30. You say that you left there then without having agreed on anything?

A. Nothing was agreed on.

Q. 31. What was the attitude of Mr. Moulton in these conferences?

A. Mr. Moulton was a long time associated with the McElwain Company, W. H. McElwain, the founder of the company. He was in their employ for a good many years. He came out from Boston—he is a New England man—he came out from Manchester about 1908 and took employment with this company. Mr. Moulton had the very highest regard for the McElwain organization, for the people, their character, their standing, their integrity, and Mr. Moulton went so far when we discussed this audit as to say that any statement presented by McElwain, any inventory made by Mr. McElwain, would carry with it his unquestioned endorsement, that he would agree for him to make it himself, that he had confidence in him.

Q. 32. You say you got on the train and started for New York; will you resume your narrative from that point?

A. We got on the train. I do not think we discussed it very—I do not think we discussed it at all on the train between Boston and New York. Anyway, we went to the Biltmore Hotel, and these gentlemen also went there. After we had dinner—I think we got there about night—we had dinner.

Q. 33. Was this by any prearrangement with those gen-
[fol. 157] tlemen? Did you arrange for them to go with you?

A. I do not think so. My memory is we had no knowledge they were going. I know we had not asked them.

Q. 34. Just go ahead, Mr. Johnson.

A. After having dinner, we adjourned to the messanine floor. Mr. Moulton in the meantime had remained over in Massachusetts to see his people who live there. We separated. I went off in one side of this lobby and discussed the matter with Mr. Storrow, and Mr. Rand and Mr. King and McElwain were in another part of the same room, discussing the matter; and Mr. Storrow was anxious to work out something because of the fact he had sold this stock to his clients and seemed very anxious to work out some proposition. I think he advanced interest only in the preferred stockholders. He did not seem to care very much what became of the other stockholders and as he had

not sold the stock that was natural. Finally he asked me to suggest a basis of exchange on the first preferred stock. After considering it a while, and making some figures on it, I said to him, subject to proper inventory and appraisal and evidence of assets, I thought that I might be willing to recommend 87½ for the preferred stock. I want to say, however, that in all this discussion that we all made it very clear we were talking as individuals and that we had no authority and did not try to bind the company in any matters we discussed there. All we could do, if we approved that, was to submit that back to the company and allow them to pass on it.

Q. 35. The next conference apparently occurred in St. Louis on May 8th, 1921, at the home of Mr. Rand. Did you participate in that conference?

A. I think I was there—I am quite sure I was.

Q. 36. Can you state, briefly, the developments in that conference?

A. I think there they had some tentative figures—

Q. 37. Didn't they have the balance sheet of April 30, 1921, but not an audit?

A. Yes. I say they were tentative figures. They were not considered figures; they had those figures, and they were very much worse than we had anticipated; in fact, they were so bad that we stated that we did not see how [fol. 158] we could possibly go along with it; it looked like it was an impossible proposition.

Q. 38. What effect did that have on the gentlemen present?

A. It did not seem to have very much effect on Mr. King, but I think Mr. McElwain was stunned. I think he practically lost his bearing.

Q. 39. Mr. King and Mr. Rand in that conference were delegated then to retire and try to find some method of doing something to save the situation, were they not?

A. Well, yes. Yes, either at my suggestion or their suggestion or some one's, I know they did retire and were gone for quite a little while.

Q. 40. Did they eventually bring in a suggested basis or a suggested plan of solving the problem?

A. Yes, they brought in a plan based on the net assets as indicated in that statement—they brought in a plan by which the stock of the McElwain Company be acquired at a certain price, which, if I remember correctly, was 80 for the first preferred, 80 for the second, and I believe 30 for the common—I do not remember. I am not sure now on these figures.

Q. 41. Were they the figures as finally adopted?

A. No, they were not the figures. When I looked over the figures I took the position that the first preferred stockholders had a right to greater share in the assets than the figures that had been made, and I was satisfied that Mr. Storrow would not approve of any adjustment on that basis, and I think I suggested figures that were finally adopted.

Q. 42. And those figures were what?

A. 82½ for the first preferred; 75 for the second preferred.

Q. 43. You are speaking of percentages?

A. Percentages; and 50 percent for the common.

Q. 44. Subsequently those figures were incorporated into a contract which was executed on May 11, 1921, in Chicago, were they not?

A. Yes, sir.

Q. 45. Did you participate also in the conference at Chicago where this contract was signed?

A. Yes, sir.

Q. 46. That was accepted by all of the parties, including [fol. 159] Lee, Higginson & Company, who were representing the first preferred stockholders?

A. It was.

Q. 47. I hand you a document consisting of two pages and ask you to identify that.

A. This is a copy of a circular letter that I issued on June 16, 1921, and addressed to our stockholders.

Mr. Blake: We offer that as Respondent's Exhibit 26, consisting of two pages.

Examiner Bennett. It will be received as Respondent's Exhibit Number 26.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 26, Witness Johnson", was received in evidence and is forwarded herewith.]

Q. 48. You have there a sheet containing certain figures, and I will ask you to state the nature of that sheet, and the figures that are shown on it.

A. This is a sheet that was prepared by our auditing department showing finished merchandise on hand beginning January 1921, the amount of orders, shipments for the month, and the difference carried over into the next month, and the final cancellation and shrinkage in the orders that the company had for the months of January, February, March, April and May 1921.

By Mr. Brindley:

Q. 49. For what company?

A. The International Shoe Company.

Examiner Bennett. Do you offer that?

Mr. Blake. We offer that as the Respondent's Exhibit Number 27.

Examiner Bennett. It will be received.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 27, Witness Johnson", was received in evidence and is forwarded herewith.]

The Witness. Might I say, rather than just giving you the sum total, that this sheet indicates that the company had for that period orders to the extent of $37,265,000, out of which it shipped $25,875,000, and due to this inability there were $11,395,000 either cancelled by us or the cus-
[fol. 160] tomers. In other words we shipped only about two-thirds of the goods we had orders for during that period just preceding the purchase of the McElwain Company.

By Mr. Blake:

Q. 50. Mr. Johnson, as chairman of the board of the International Shoe Company, and as being actively in touch with the shoe and leather industry of the United States, in May 1921 you were aware of the critical condition in the trade at that time, were you not?

A. I was.

Q. 51. Just state briefly what was the situation that faced the country and also faced the trade at that time.

A. The condition in the leather and shoe industry was almost panicky. Hides and calf skins and kid skins had declined almost seventy-five percent. In other words, the values then represented were about twenty-five percent of what they were eighteen months before. Leather had declined in a like proportion. Manufacturers that had carried a stock of goods on their floors were confronted by the fact that they had very high priced shoes, goods that they could not sell without a very great sacrifice, and many of them did not have the nerve to take the loss and the longer they carried them the worse their losses were. I know in many instances that shoes, and especially women's shoes, that had been made to sell as high as $10 a pair to the retailer were sold for $1.00 or $1.25 a pair. That is an extreme case. During that period I should say that our shoes were reduced about forty percent over the price prevailing just prior to the break in prices of leather and hides. In our company we had rather, I feel, anticipated what was going to follow and were working strongly on the point of keeping our stock of merchandise down and keeping a quick turn-over, and in that way our company probably escaped the disaster that practically every company was confronted with. Large tanners—those that I know of personally that have been exceedingly successful and made a great deal of money, many of them were on the verge of bankruptcy, and there was a general demoralized condition in the trade, to such an extent that it looked like any disaster that might happen to a concern as well known and as well established in the minds of the people as the McElwain Company was would be so far-reaching that possibly there would be no way to stop it.

[fol. 161] Q. 52. Were you also familiar with financial conditions in this country at that time?

A. Yes, sir.

Q. 53. What were those conditions?

A. The money rate was high, banks were afraid of most everybody—they didn't know who was good. Credit was hard to obtain, and this was especially true in the shoe and leather trade, because they knew of the conditions that

had to be met by the tanner and the shoe manufacturer, and there was a general want of confidence in nearly every shoe manufacturer and nearly every tanner in the country.

Q. 54. What, in your opinion, as a business man experienced in financial matters, would have been the effect if the W. H. McElwain Company had been permitted to go into a forced liquidation?

A. Well, it is hard to tell where that would have ended. I am quite sure that a great many concerns that were not strongly financed would have been involved. There were companies that were strong enough, of course, to weather the storm, but it would have been very hard riding, and it would also involve a good many banks, because the McElwain Company had very large loans, they had upwards of a million dollars of loans with some banks, and I think it would have been very far-reaching had they been forced into bankruptcy or into the hands of a receiver at that time. Of course, the natural result would have been to further demoralize prices and setting up and putting additional burdens on the shoe industry.

Q. 55. At this time did the International Shoe Company need the sales organization of the W. H. McElwain Company?

A. No. Our records will show we had been oversold for four or five years; we were selling more goods than we could produce. We were developing our factories as fast as we could, but we could not keep up and develop our production as fast as our business was being developed. I might say that was the impelling motive for entertaining this proposition to buy the McElwain Company. We did not need business at all. We had all the business we could take care of. We did need however, their production. We needed it because we had the goods sold and we did not have goods with which to make deliveries.

[fol. 162] Q. 56. What was the attitude of the International Shoe Company in respect to the sales branches of the McElwain Company after the acquisition?

A. Well, as quickly as we could we tried to analyze the situation. We were quite awakened to the fact that the conditions were much worse than the statement we had bought it on indicated. We felt that we wanted to work out the matter in the way that would best preserve what

we had, and also to give the people that had tied up their affairs with McElwain a chance to get along, and, pursuing that policy, we sold the Nathaniel Fisher & Company business back to them. We sold it at a loss. We sold the McElwain-Barton Company back to Barton, Wheeler and his son. We sold that at a loss. We sold that on a long time, on a small payment—much smaller than any credit basis would warrant, and took notes payable in monthly instalments, extending I think twelve months or maybe more. We continued to sell them goods and to supply their wants, especially on the line of goods that McElwain had been theretofore making for them, because we wanted to protect them against loss on those goods, as necessarily would follow fill-in orders, and buy their goods to keep their stock intact.

When it came to the other branches, those that were controlled by McElwain and the branches in which only the goods made by the McElwain Company were being sold, we made an effort to dispose of these branches, but we failed. Then the figures indicated clearly that the operating losses were exceedingly heavy, that the cost of getting the business, that every day we maintained them entailed further losses, and after having failed to develop any sale of those branches intact we felt there was nothing to do except to sell out the goods to a certain point, then to take the remainder and distribute them among the jobbing houses in the east and in the west, and in that way clear up and protect ourselves as much as we could against a very severe loss.

Q. 57. Then these branch houses that were closed up were really closed on account of the high cost of operating them and because of continuous losses which they were showing in the operation?

A. We have figures that will show very clearly that the [fol. 163] losses were almost appalling trying to do business in those branches; and I want to say right there that the only competition, if it can be assumed there was any competition whatever, between the McElwain Company and the International Shoe Company, it must have been between the jobbing houses that were maintained, and we did not undertake to and did not want to close them up. We wanted those people to get a chance to go on, and we made a monetary sacrifice in trying to help them continue in business.

Q. 58. Mr. Johnson, you have been, and still are, actively in touch with the sales organization of the International Shoe Company?

A. Yes, sir.

Q. 59. You know the conditions of competition that face the International Shoe Company and its branches at all times, do you?

—. I think I do.

Q. 60. You knew those conditions as they existed in 1921?

A. Yes, sir.

Q. 61. What competition do you know of that existed between the W. H. McElwain Company and the International Shoe Company prior to the acquisition?

A. I never felt that there was any competition—that is, what you would call substantial competition. At most it was incidental, and it was so imperceptible that I would not know where to locate it.

Q. 62. Did you know of any instance where any customer or any of the International Shoe Company's salesmen sent in shoes of the W. H. McElwain Company as illustrative of the competition they were having to meet?

A. I do not call to mind one instance.

Q. 63. In the discussions in your sales meetings in the International Shoe Company do you remember that McElwain competition was ever discussed?

A. I do not think it was.

Q. 64. Do you remember that their prices of shoes which had to be met by the salesmen of the International Shoe Company were ever discussed in those meetings?

A. I do not think it was, and my reason for feeling it so strongly is that McElwain was reaching a class of trade [fol. 164] that this company did not seek to reach and that our salesmen did not come in contact with their salesmen.

Q. 65. Why do you say that? In what respect was the nature of their business different from the business of the International Shoe Company?

A. They sold their goods very largely in the cities, they sold them to jobbers; they did things that this company would not do.

Q. 66. What, for instance?

A. For instance, putting the name of the retailer on the shoes. This company declined to do it, and the retailer was just as positive in his conclusion that he would not buy

unless we did, and so that simply cut us out, and we did not try to do business with him. Again, the construction of the McElwain shoe was of a nature that did not appeal to our country trade and I assume that at that time our goods were of a construction and nature that did not appeal to the class of trade that were buying the McElwain shoes; and for that simple reason I have not been able to locate any real potential competition between the two companies.

Mr. Blake: Does the examiner want to suspend at this point?

Examiner Bennett: We had better take an adjournment until 9:30 o'clock tomorrow.

[Therefore, at 5:30 o'clock p. m. May 28, 1924, an adjournment was had until 9:30 o'clock a. m. May 29, 1924.]

St. Louis, Mo., May 29, 1924—9:30 o'clock a. m.

[Met pursuant to adjournment.]

Q. 67. Mr. Johnson, how often did the directors of the International Shoe Company meet, on what days?

A. Tuesday of each week—at half past ten Tuesday morning of each week.

Q. 68. It appears from the record thus far that some of the contracts that were entered into, for instance, the Bennett, Limited, contract, and ratification of the offers for the McElwain properties, in June, 1923, occurred some days after these contracts and offers were dated. Is that explained by the fact——

A. Very possible it would be a very rational explanation of it, unless in an emergency we never met but once a week.

[fol. 165] Mr. Blake: That is all.

Cross-examination.

By Mr. Brindley:

X Q. 69. You do not know that is the reason these documents bear these dates, though, do you?

A. Not absolutely.

X Q. 70. What is your connection with the International Shoe Company?

A. I am chairman of the board.

X Q. 71. What department of its business do you handle or direct?

A. That is about as hard a question as you could ask me. I do not know.

X Q. 72. Have you any connection or supervision of the sales of the International Shoe Company?

A. No; no special connection with that or any other branch.

X Q. 73. Who is in charge of the sales department?

A. The sales managers.

X Q. 74. And there are a number of them?

A. Yes; we have two with this branch, and one each with the other branches.

X Q. 75. Have you been connected with the International Shoe Company since its organization?

A. I have.

X Q. 76. What class or style of shoes did the International Shoe Company make and sell in May, 1921, and prior to that date?

A. We make a medium class of shoes—when I say medium I mean not the lowest grade and not the highest grade.

X Q. 77. Did it make and sell men's shoes?

A. Men's, yes; and boys', misses', children's, women's, girls'—a pretty comprehensive line.

X Q. 78. What line did the W. H. McElwain Company make in 1921 and prior thereto?

A. They made men's and I think a few boys' shoes—medium priced men's shoes.

X Q. 79. Do you know where the output of the McElwain Company was sold?

A. I know that very largely from the information I have gained from the McElwain people.

X Q. 80. You do not know it of your own knowledge then?

A. I never heard of them in our trade territory to any extent.

X Q. 81. Did the W. H. McElwain Company make several styles and kinds of men's shoes?

[fol. 166] A. I should say that their line was a very close line, that is, very little variation in quality or price. It was probably a closer line than most any manufacturer in this country made before.

X Q. 82. Do you know the price at which those shoes were sold?

A. No, I do not.

X Q. 83. For what kind or class of men were the shoes made and sold by W. H. McElwain & Company suitable?

A. My information, and that has come largely since our acquisition of the company, is that they made a line of goods that appealed largely to the city trade. Their construction and finish were of a nature that would quite largely appeal to the city buyer, in that they gave a great deal more attention to finish than they did to wearing quality. Our company reversed that. We gave a great deal more attention to the wearing quality of our goods than we did to details and finish, and that is the differentiation that I would make.

X Q. 84. Did the International Shoe Company make and sell several different kinds or classes or styles of men's shoes?

A. Yes, sir.

X Q. 85. At what price were those shoes sold?

A. You know there has been such a fluctuating value in shoes in the last seven or eight years it would be hard to give it. Up to the beginning of the war I do not think we made a shoe that we sold over three dollars.

X Q. 86. You mean three dollars per pair?

A. Per pair. Most of our shoes were under that price.

X Q. 87. Are you making substantially the same line and style and class of men's shoes now?

A. I should say so, except we believe we have improved the quality of the work and improved the general standard of our shoes.

By Examiner Bennett:

X Q. 88. Will you develop what that price is, whether it is the retail price or the price to dealers?

A. That was the wholesale price.

By Mr. Brindley:

X Q. 89. The price you mentioned meant $36 per dozen to the retail dealer?

A. Yes, sir.

X Q. 90. At what price, so far as you know, were such [fol. 167] shoes sold by the retailer to the customer?

A. Well, when we were selling those shoes at around three dollars—I really think our maximum price, if I remember, was $2.85 or $2.90. I think those shoes were made to retail at about $4 per pair.

X Q. 91. Does that mean all men's shoes made and sold by the International Shoe Company?

A. No; the bulk of our shoes were under that price.

X Q. 92. At what price were the bulk of your shoes sold to retail dealers?

A. I would say that prior to the war our prices would average, say, $21 a dozen.

X Q. 93. What was the highest priced shoe made and sold to retailers?

A. I have just answered that and I will reiterate it—I should say that three dollars was possibly the highest priced shoe we produced.

X Q. 94. And that included several different kinds and styles of shoes?

A. Our line was rather short, because we operate on so many different kinds of shoes that our line is necessarily very much shorter than any specialty dealer. For instance, I should say that on shoes of that kind we would go out with probably twenty-five styles, and I should think McElwain would probably go out with two hundred or two hundred and fifty styles.

X Q. 95. Of men's shoes?

A. Of men's shoes of that quality, yes. Necessarily, our business, on account of our restricted line, was very much less than a concern who specialized in that line and devoted all of their attention to it and showed a very long line of samples.

X Q. 96. The International Shoe Company showed a very large line of samples?

A. In our general line, but I have just said we had men's shoes, women's shoes, children's shoes, girls' shoes, boys' shoes and infants' shoes, and, when you take all of our line together, it was a long line.

X Q. 97. Can you secure at this time a copy of the catalogue issued by the International Shoe Company in 1921, and also at this time?

A. I think we can.

X Q. 98. Would you send for them, please?

A. Yes; I would be very glad to do that.

[fol. 168] X Q. 99. Were the men's and boys' shoes made by the International Shoe Company in May 1921 and prior thereto sold generally throughout the United States?

A. No; they were sold generally throughout the south, middle west and far west. We had practically no business north of Pennsylvania, very little in Ohio, and New York State infinitesimal, and New England nothing.

X Q. 100. Did you have any business in West Virginia?

A. Yes, sir.

X Q. 101. Quite an extensive business in West Virginia?

A. Well, compared to the middle west, no. The farther we got that way the least business we had.

X Q. 102. How about the State of Virginia?

A. We had fairly good business there, but very little until the last few years. Our business is developing in Virginia quite rapidly.

X Q. 103. When you speak of business in the different states, you mean, of course, business with your general line?

A. Our general line.

X Q. 104. Does that also include your business and sales of men's and boys' shoes?

A. It does.

X Q. 105. At the time the International Shoe Company acquired the capital stock of the W. H. McElwain Company, was the International Shoe Company making and selling generally lines of men's shoes which would be suitable for lawyers to wear?

A. It depends on the kind of lawyer.

X Q. 106. Describe the one that could wear the International Shoe Company's product with propriety.

A. I will say a cheap lawyer, generally.

X Q. 107. A cheap lawyer?

A. Yes, sir.

X Q. 108. Were you making shoes that would be suitable for physicians and dentists and surgeons to wear?

A. Practically the same class. We did not appeal to the high class very much. We appealed to the people that wanted a good substantial shoe, that were not over-critical as to appearance.

X Q. 109. What class of people does that include?

A. Our business was very largely in farming communities, colonel. I should say that 95 per cent of our busi- [fol. 169] ness was in small towns—yes, more than that—probably 98 per cent of it.

X Q. 110. What do you mean by small towns?

A. We mean from the crossroad store up to towns of five or six thousand. That was the bulk of our business.

X Q. 111. You did not then as a rule sell in towns with populations of more than six thousand people?

A. We had some business, but I am stating the bulk of it.

X Q. 112. But isn't it a fact that you sold in the territory you have mentioned, in practically all the cities and towns of those states?

A. We sold to a very small extent. For instance, in the City of Chicago, as I remember it, we had a business of about fifty thousand dollars with a population of three million people.

X Q. 113. How much business did you have in the city of Dallas, Texas?

A. Probably ten thousand dollars.

X Q. 114. That is merely your estimate of it at this time?

A. Pretty accurate. I keep in pretty good touch with what we are doing.

X Q. 115. What would you think your business in the city of Tuscaloosa, Alabama, was?

A. Very likely we were doing more business in Tuscaloosa than in Dallas. I do not know. I would have to look up the records.

X Q. 116. Could you tell from memory whether or not the International Shoe Company was selling shoes in Athens, Georgia?

A. I should say so. I cannot tell without referring to the records.

X Q. 117. In 1921 and prior did the International Shoe Company make and sell a shoe known as a dress shoe?

A. It was the general term applied to shoes of our better quality, for dress wear.

X Q. 118. What does dress wear shoes generally include or mean?

A. It means generally light shoes, welt shoes and shoes that would according to the requirements of the person be termed a dress shoe; what you might term a dress shoe—

X Q. 119. Might not meet your idea?

A. —might not meet my idea, and what a farmer might term a dress shoe would not meet your idea whatever. [fol. 170] Those are relative terms applying to the individual tastes of the men that buy shoes.

X Q. 120. The description of dress shoes manufactured and sold by the International Shoe Company, what does that include?

A. That includes all kinds of shoes in men's shoes outside of regular work line. It may be a McKay. I think up to that time we had what we termed dress shoes at $1.50 a pair.

X Q. 121. Did you have at that time and did you sell a shoe that was suitable for wearing in a bank by persons employed in the banking business?

A. There is no doubt that people in banks might have worn them.

X Q. 122. And also people in any kind of business?

A. I think they did, yes; but unfortunately for us our goods were not appealing to a man that looked for a shoe of a high grade of finish and style. We did not make any special claim in that respect. We did claim that we made the best shoe for wearing and service that could be produced.

X Q. 123. Made of what kind of leather?

A. We made them out of calf skin and side skin, and out of patent leather, and various kinds of leathers.

X Q. 124. Did you make and sell at that time a shoe out of a leather that is known as vici?

A. Vici kid is a trade term. There is no such thing as vici. That is a patent name and it really means nothing.

X Q. 125. But you did make and sell such a shoe?

A. Yes, we made vici shoes, and we had from $1.50 up to the top.

X Q. 126. To the top?

A. Yes, that is up to $3.00.

X Q. 127. And you mean that they were sold to the retailer at $1.50 to $3.00 per pair?

A. Yes. I am only speaking from memory and I think the catalogue will indicate that.

X Q. 128. Did the International Shoe Company in 1921 and prior make styles and classes of men's shoes suitable for wear in all seasons of the year?

A. Yes, sir.

X Q. 129. Shoes that were suitable for winter as well as for summer wear?

A. Yes, sir.

[fol. 171] X Q. 130. That includes what we call high shoes and low shoes?

A. Yes, sir.

X Q. 131. And such shoes were made of the different kinds of leather you have mentioned?

A. Yes, sir. In that connection I want to say, as to our high grade shoes, the McElwain Company had a represented capacity, according to their figures they gave us, of 38,000 pairs a day. Our capacity on shoes of what we termed our best welt shoes was something like three thousand pairs a day. You see, we made very few of those shoes. It was the small end of our business.

X Q. 132. There is a saying that a doctor does not take his own medicine or a lawyer his own advice. Does the same rule apply to a shoe manufacturer?

A. I am afraid to say that it does.

X Q. 133. May I infer from that, then, that you do not wear shoes manufactured by the International Shoe Company in its general line?

A. I do, and have done it ever since I have been in it, and I do not remember of ever having bought but one pair of shoes outside of the factory. I have been loyal to the company. But many of our people will not; they are more fastidious than I.

X Q. 134. But the shoes manufactured and sold by the International Shoe Company are suitable for you to wear?

A. The best we made, and I wore them.

X Q. 135. Does that include the dress shoe made by the International Shoe Company?

A. All the shoes I wore were made by the company, with the exception, I think, of one pair, in twenty-five years.

X Q. 136. Quite a good record.

A. I have been a clean customer of the company.

X Q. 137. You stated yesterday that after the International Shoe Company acquired the capital stock of the W. H. McElwain Company, the sales agencies of the W. H. McElwain Company were disposed of; is that true?

A. I stated that two of them were disposed of.

X Q. 138. Two of them?

A. Yes, sir.

X Q. 139. What two did you mean?

A. I mean the McElwain-Barton Shoe Company of Kansas City, which was sold to Mr. Barton, senior, and junior, [fol. 172] his son, and to Mr. Wheeler. They were men who had formerly—you see the Barton Shoe Company is one of the old shoe companies in this section of the country. They organized a business very many years before we began business, and they were consolidated with or taken over in some way by the McElwain Company, and we sold the business back to Mr. Barton and his associates.

X Q. 140. What was the other sales agency disposed of?

A. We sold the Nathaniel Fisher Company of New York.

X Q. 141. Are those the two agencies that you stated yesterday that were sold at a loss?

A. Yes, sir.

X Q. 142. In what business were those two agencies engaged?

A. Shoe jobbing business.

X Q. 143. And their sales were to what kind of customers?

A. Well, I never heard of Fisher—I don't think he came anywhere in this country. The McElwain-Barton Company of Kansas City, I have understood their business was very largely in the west, west of Kansas City.

X Q. 144. To what class of customers?

A. I do not know. I would say this, that they were a very poor class of customers.

X Q. 145. Did they sell to the retailers only or to other dealers as well?

A. I should say they sold to the retailers.

X Q. 146. Exclusively?

A. I do not know of any other accounts that they had.

X Q. 147. How about the other company, the Fisher Company; did it sell to retail dealers?

A. I think they sold the bulk of their business right there in New York City.

X Q. 148. To what class of customers, retailers?

A. Small retailers.

X Q. 149. Do you know whether they sold to any other retailers or jobbers?

A. I should say not. I have the catalogue here now for 1913. I remarked that the sales of shoes made by us compared to McElwain was about twenty-five styles, and a reference to the catalogue indicates that just twenty-five styles are catalogued.

X Q. 150. You mean that your catalogue shows that the [fol. 173] International Shoe Company were making twenty-five different styles of shoes similar to those made by W. H. McElwain Company?

A. Yes, sir. The 1921 catalogue indicates thirty-two styles, ten low shoe styles and twenty-two high shoe styles.

X Q. 151. Your catalogue for 1921, then, at the time of the acquisition of the W. H. McElwain Company shows that the International Shoe Company was making and selling thirty-two styles of shoes similar to those made and sold by the McElwain Company?

A. Comparable in price.

X Q. 152. And suitable for wear in like communities?

A. I should have to answer no.

X Q. 153. The low shoes for men made and sold by the International Shoe Company were suitable for wear in the summer season, were they?

A. Yes, sir.

X Q. 154. Would that be true of the low shoes made and sold by the W. H. McElwain Company?

A. Yes, sir.

X Q. 155. And you wear low shoes made by the International Shoe Company?

A. Yes, sir.

X Q. 156. And you live in St. Louis?

A. Yes; I am one among very few.

A. Probably 800,000 people here.

X Q. 157. There are lots of different kinds of shoes made and sold in St. Louis?

A. A great many.

X Q. 158. Does the International Shoe Company sell any of its men's shoes to retail dealers in the city of St. Louis?

A. To the outlying dealers, out in the outlying district. We have practically no business in the downtown district, and never have had.

X Q. 159. Will you examine that catalogue of the International Shoe Company for 1921, and describe to me generally the various styles of low shoes the International Shoe Company made and sold at the time, similar to the low shoes made and sold by the W. H. McElwain Company?

A. 1921?

X Q. 160. Yes.

A. Well, there were ten styles of low shoes comparable in price to the McElwain.

X Q. 161. Are they shoes that are suitable for ordinary every day wear in the appropriate season?

A. I think so.

[fol. 174] X Q. 162. By different classes and kinds of men?

A. Yes; we felt that they were.

X Q. 163. And for men engaged in different employments, businesses and professions?

A. I can only speak by the records, colonel. It is not what I might think. It is facts I would have to come back to, and that is that we were never able to sell our shoes in the cities and to large retailers. I would say that not a tenth of one percent of them was thus sold.

X Q. 164. But you were able to sell to men in the smaller cities?

A. In the smaller cities and towns. In fact, we have catered all the years we have been in business to the small town trade.

X Q. 165. And some men in the small towns can wear as good a shoe as the man in the city?

A. That is true, but they are not as exacting or critical in their requirements. In other words, we appealed more to the men that wanted a decent looking shoe and at the same time a very substantial wearing shoe. In other words, in a measure we have always been accused of it, and we shall probably have to admit it, we sacrificed often the appearance to quality of wear.

X Q. 166. The men's shoes made and sold by the International Shoe Company of the thirty-two styles you have mentioned similar to those made and sold by the W. H. McElwain Company were just as good as those shoes made and sold by the W. H. McElwain Company, were they not?

A. I think they were better, that is from the standpoint of service, but the unfortunate part of it is we could never convince the retailer who catered to city or dressy wear, we could not convince him of that fact,—the fact that our company traveled five hundred men and we were able to sell only three thousands pairs a day and that would be maximum I think of our Patriot shoe.

X Q. 167. Is that your information, and your opinion, that your salesmen did sell about three thousand pairs a day?

A. That is my opinion.

X Q. 168. Do you mean that is your average sales for the year?

A. I should say so; yes.

[fol. 175] X Q. 169. What would be then your opinion as to the average sales for a year of the International Shoe Company's shoes similar to those made and sold by the McElwain Company?

A. Taking the Patriot shoe as the basis, I should estimate our sales at possibly two and a half million dollars.

X Q. 170. What would be your estimate of the number of pairs of shoes for that amount?

A. About eight hundred thousand to eight hundred and fifty thousand pairs.

X Q. 171. Then do you mean by that these shoes which you describe as the Patriot shoe?

A. Yes, sir.

X Q. 172. What was the reason for selling the sales agencies of the W. H. McElwain Company at a loss?

A. Because we thought we would lose less money by selling them than we would by holding them.

X Q. 173. You were anxious to dispose of those agencies?

A. Yes; then again the people that had run the business were anxious to buy. We were approached by them rather than we approaching them. They wanted to buy the business and we were very glad to sell it.

X Q. 174. It has been the policy of the International Shoe Company always to sell its products direct to the retailer?

A. Yes, sir.

X Q. 175. The acquisition of the stock of the W. H. McElwain Company did not cause any change in that policy?

A. No, sir.

X Q. 176. You stated, I believe, that the W. H. McElwain Company sold its output largely in the cities of the north and east?

A. Yes, sir.

X Q. 177. And it was in that territory that the business of the International Shoe Company was not well developed?

A. Infinitesimal compared to our general business.

X Q. 178. Was the fact that the W. H. McElwain Company was established in the larger cities one of the reasons why the International Shoe Company desired to acquire that company?

A. That possibly had its influence.

X Q. 179. And the International Shoe Company was always desirous of getting into the market of the W. H. McElwain Company territory?

[fol. 176] A. Naturally we wanted to develop our business.

X Q. 180. And this was simply one of the methods pursued in accomplishing that purpose?

A. I should say we must have considered that.

X Q. 181. As a result of that, the acquisition of the stock of the W. H. McElwain Company, the International Shoe Company does business in practically the whole United States, does it?

A. We do now; yes. The bulk of all the business is done in the west, colonel. The western houses do about six times as much business as will the McElwain Company in the east.

X Q. 182. The St. Louis shoe market is more suitable for that territory than for the east, is it?

A. I think our goods appeal more to the western trade than they do to the eastern trade. That conclusion is well established by the volume we have in the west and the small volume we have ever been able to do in east.

X Q. 183. Do you recall the time when the complaint issued in this proceeding by the Federal Trade Commission was served on the International Shoe Company?

A. I do not.

X Q. 184. Do you recall an instance when Mr. King and Mr. Blake went to Washington after the complaint was issued and returned to St. Louis?

A. I do not.

X Q. 185. Do you recall being present at a conference after the complaint was issued in which the future policy of the International Shoe Company was discussed?

A. I do not.

X Q. 186. Do you remember any discussion of the future plans or policies by Mr. Rand, Mr. King or Mr. Blake?

A. I am rather of the opinion that I was not in the city at the time, colonel. I am not sure of that. That is my impression now.

X Q. 187. That being true, of course you would not be present.

A. That is my impression. I will not be positive on that.

X Q. 188. Do you know what plan or policy was agreed upon after the complaint was issued in this case in reference to the capital stock of the W. H. McElwain Company?

A. Only by hearsay. I had no communication with Mr. King whatever. The details had been handled by Mr. Rand.

Mr. Brinkley: That is all I care to ask Mr. Johnson.

[fol. 177] Redirect examination.

By Mr. Blake:

Q. 189. Mr. Johnson, you have stated in your cross-examination that in acquiring the McElwain property you felt that some consideration was given to the fact that that offered an opportunity to get into the McElwain territory, that is the northeast and east and perhaps into the large cities. I ask you if you would have bought the McElwain Company for that reason alone?

A. No.

Q. 190. Is it a fact, or is it not, that the time the International Shoe Company was vastly oversold on its products?

A. Yes, and it had been for years.

Q. 191. Would it have been possible for the International Shoe Company to have sold in that territory at that time its own product?

A. We had no reason to seek that market.

Q. 192. What was the compelling motive so far as the International Shoe Company was concerned in acquiring the W. H. McElwain Company?

A. The compelling motive was to get shoes to fill orders that we had the customers to buy them and had already orders on our books we could not fill.

Q. 193. Is it not a fact that another compelling and influential motive in connection with the acquisition was the preventing of a serious situation, perhaps a panic, in the shoe industry and allied trades?

A. That had a very strong influence in making our decision.

Q. 194. You have stated in your direct examination, as to these so-called dress shoes which were described as being similar to the shoes made by W. H. McElwain Company, the output of the International factory was about three thousand pairs per day. In a general way, where and to what class of customers were those shoes being sold?

A. Small town trade in the southwest and middle west.

Q. 195. Were any of those shoes being sold to the retailers in the larger cities?

A. I do not call to mind a single customer.

Q. 196. Were any of them being sold in the larger cities or communities of the north or the east?

A. No; we had no trade there.

[fol. 178] Q. 197. You have testified that the International Shoe Company at that time, in 1921, was selling some of its shoes, a very small percentage, in the cities. To what class of customers in the larger cities Were you selling them to the large retailers or selling them to the smaller dealers on the outskirts of the city?

A. We were selling them altogether to the small retailers.

Q. 198. Did the International Shoe Company in 1921 have, or has it now any considerable business in the large cities?

A. We have more business in the large cities, but our business is now confined practically to that same class of trade. I will explain again—I have explained one of the

fundamental reasons is we would not comply with the conditions that the large retailer insists upon, that is having his name upon the goods. We will not make them special by changing our standard of construction to correspond to the ideas of the retailer, and it is for that reason we cannot do business wih them.

Q. 199. Some reference was made to the sales of the International Shoe Company in the City of St. Louis. To what class of customers in the City of St. Louis is the International Shoe Company selling its product?

A. The small retailers in the outlying districts.

Q. 200. You mean by outlying districts the fringes of the city and suburbs?

A. Yes; Franklin avenue and Morgan avenue and to the extreme edges of the city. I should think that eighty or ninety percent of the goods we sell in St. Louis is sold in those kind of stores. In saying that permit me to further explain here I am now referring to the merchandise made in the west.

Q. 201. In several places in your direct examination reference was made to the fact that twenty-five styles of the shoes made by the International Shoe Company were similar to those made by the McElwain Company. Explain what you mean by similar, and if there is any dissimilarity explain that.

A. I had reference more especially to the relative prices at which McElwain were selling their shoes. There has always been a distinct idea in construction and also in the way we finished our shoes. We have given at all times more attention to the wearing quality of the shoes than we [fol. 179] have to the detail of workmanship. The McElwain Company reversed that, as I understood it, and gave much more attention to the appearance of the shoe than they did to the wearing qualities.

Mr. Blake. That is all.

Recross-examination:

By Mr. Brindley:

X Q. 202. The principal reason that actuated you and the other officers of the International Shoe Company in acquiring the stock of the McElwain Company was that you

thought you were making an advantageous trade, wasn't it?

A. We did not think we were making as bad a trade as we did.

X Q. 203. That does not answer my question. Didn't you think you were making an advantageous trade for yourself and the stockholders of the International Shoe Company?

A. We thought we were making a trade that would finally result in bettering the International's position.

X Q. 204. Adding to its trade and increasing its output and enabling it to sell more shoes, weren't those the general considerations?

A. We have always been selling more shoes than we could deliver. The main reason was to get manufacturing facilities that would enable us to fill our orders.

X Q. 205. So you main compelling reason was you thought you were making an advantageous trade for the International Shoe Company?

A. That was the main reason.

X Q. 206. At the time that the International Shoe Company acquired the stock of the W. H. McElwain & Company, didn't the McElwain Company have a large stock of shoes on hand, unsold?

A. They did.

X Q. 207. What disposition did the International Shoe Company make of those shoes?

A. The western branches took those shoes and sold as many as we could. We used every effort to stimulate the branches that were handling them to unload the goods. We had to cut the prices; they were entirely too high and they could not sell them and they let the business run down to practically nothing.

[fol. 180] X Q. 208. What business had run down to practically nothing?

A. The McElwain business, the sale of their goods and the manufacture, and they were down to a production, possibly the records will show, of six or seven thousand pairs a day, and they had been running on that for months.

X Q. 209. What approximately was the amount of shoes unsold that the McElwain Company had on hand at the time of the acquisition of its stock?

A. I would have to refer to the records to get that.

X Q. 210. You could not give an approximation in answer to that?

A. It would be a guess. I can guess if you want me to guess at it.

X Q. 211. Unless you can be approximately correct, of course there is no use in your doing it. Those shoes on hand at the time the stock of the McElwain Company was acquired were sold by the International Shoe Company to its customers?

A. A few of them,—only a small portion.

X Q. 212. Only a small portion of what?

A. Of the shoes that McElwain had on hand.

X Q. 213. What did you do with the remainder?

A. They were sold through regular branches. For instance, the Barton Company, we did not get a pair of those shoes, and they sold all of them. The Fisher Company, we did not get a pair of those. We got possibly a very small percentage, and those goods we had to sell at a very low price because their construction was not up to our standard and we would not sell them to our trade without telling them exactly what they were, and therefore we had to make a sacrifice price on them.

X Q. 214. But you did sell them to your regular customers?

A. Very few of them.

X Q. 215. And those customers disposed of them in the regular course of trade?

A. I suppose they have—at least I hope they have got rid of them by this time.

X Q. 216. These thirty-two styles of shoes made by the International Shoe Company, similar to those made and sold by the McElwain Company, were, in your judgment, [fol. 181] really a better shoe than those of the McElwain Company, were they not?

A. The man that bought them would get more wear but less style.

X Q. 217. Your opinion is that the shoes that the International Company made similar to those made by the McElwain Company were really a better shoe for a less price?

A. Better wearing shoe.

X Q. 218. So far as service was concerned?

A. Yes, I think unquestionably.

X Q. 219. They would get a better shoe then by buying International than McElwain?

A. That is what the International built up on, giving the customer the very best shoes they can, at the lowest price.

X Q. 220. Can you tell from memory some of the retail dealers in the city of St. Louis to whom the International Shoe Company sold shoes at and prior to the acquisition of the McElwain stock?

A. I do not believe I could call a name. Probably several customers here.

X Q. 221. In and around St. Louis?

A. In and around St. Louis. What we term St. Louis is the St. Louis district, and that would take in East St. Louis, Belleville, Granite City, Madison, and outlying towns in St. Louis County. They are all covered in our St. Louis city territory.

X Q. 222. You are unable to call the name of a single customer in St. Louis?

A. I do not think I could call a single one, colonel. I do not come in personal contact—I do not suppose I know a half a dozen of them.

X Q. 223. Who could furnish me a list of your customers in St. Louis, 1921 and prior?

A. Well, I suppose our office could, but it would be putting a whole lot of work on them, colonel. You see, they are mixed up. They do not keep a separate St. Louis city book.

X Q. 224. Is there anyone that could tell me to whom the International Shoe Company sold shoes in St. Louis at and prior to the acquisition of the McElwain Company's stock?

A. Those figures were given access to your inspectors [fol. 182] and I thought they had obtained all of that information, and we turned over our books to them.

X Q. 225. That does not enable me to get it in this record.

A. I could not give it to you, colonel. I am answering you candidly.

Mr. Brindley: That is all.

By Examiner Bennett:

Q. 226. I wish you would give us the prices in 1919 comparable with prices you gave in 1913.

A. I should say, judge, that our prices were probably double in 1919. That was the peak price.

Q. 227. From $3 to $6?

A. Yes—I think it would approximate that. It might be 85 or it might be 95 or it might be 105, but in round figures I should say that is about correct.

Q. 228. In 1921?

A. In 1921 there had been a reduction I think of about forty per cent.

Q. 229. And at the present time or 1924?

A. Our prices are now possibly twenty or twenty-five per cent higher than they were in 1913.

Q. 230. About twenty-five per cent higher than in 1913?

A. I think that would be the extreme. I would like to explain about that. I am sure that we are making our shoes better. We are putting more work and better work on them. We have never lowered the standard of our material at any time. No matter what the market, we have stood up and taken our medicine, and I remember months that we lost a million dollars a month because of the advance in leather, and we were not covered on it. We are paying our labor today as much as we paid at the peak. We have not reduced our labor at all and the prices are, I believe, relatively lower with us than anyone else that is selling shoes.

Q. 231. But the increase of twenty-five per cent is an absolute increase?

A. No, I do not say that is an absolute increase; I should say that the quality of our shoes has improved to a certain extent. In each instance we are making shoes better than before, and every year as we are trying that, and we are succeeding. We may take the same stock number, over the same last, and the same description, but that shoe would be a better shoe than it was. We would be getting more [fol. 183] for the shoes but part of that is in the quality of the shoes as well, as the relative price of the shoes would indicate——

Q. 232. The $3 shoe in 1913 was selling at retail by the retailer at $4?

A. $2.90 I think I said.

Q. 233. About what was that shoe selling for in 1919?

A. I think cost about $6. That would be my estimate of it.

Q. 234. I mean retail.

A. At retail that shoe was selling $9 to $10.

Q. 235. The margin was larger?

A. The retailer, like anyone else, has had his difficulties, the high overhead cost, everything in the retail distribution has advanced like everything else, and the retailer is not making much money. He has to get a price. I do not know he is getting too much. We have tried all we could to get him to sell his goods as cheaply as he can, and we have sent out thousands of letters to retailers urging him to establish the margins as close as possible.

Q. 236. As a matter of fact, it did increase his margin from about a dollar to four dollars?

A. I said about the maximum. The maximum price, I would say the average retailer was getting more nearly around $9 for his shoes.

Q. 237. About what is the margin now?

A. For instance, the shoe I described first, I judge probably that would sell for $6.50 a pair at retail.

Q. 238. That is at retail?

A. At retail.

Q. 239. Did you have any distribution at all in New York and Boston prior to the spring of 1921?

A. I do not think we had a single account.

Q. 240. Dress shoe is a technical term, isn't it, meaning patent leather or enameled shoe?

A. That is not the sense in which you use the term here. A dress shoe generally applies to all light shoes. There is a distinction between a work shoe and a shoe worn for Sunday wear, as we say.

Q. 241. Technically, a dress shoe is a shoe worn with full dress, isn't it?

A. Technically a dress shoe is a shoe worn with full dress, but what we term dress shoes are shoes that a man, [fol. 184] a workman, will buy, a pair of heavy shoes to wear every day, and then he may wear a pair of dress shoes that cost a great deal less than his work shoes, and he calls those Sunday shoes, and they are light, kid or side leather, or something like that.

Q. 242. I wanted to get that distinction.

A. That is it; yes.

Q. 243. The downtown stores in the larger cities sell quite considerably to out-of-town customers, do they not? Isn't that true of retailers downtown?

A. Of course they do wherever they can.

Q. 244. Such out-of-town trade as comes to large cities in the retail trade, goes downtown, to the downtown stores, doesn't it?

A. I think so.

Q. 245. And the outlying stores would sell to the neighborhood?

A. The local trade.

Q. 246. You made a statement that the shoes which you made, that is dress shoes, the better quality of men's shoes were not suitable for wear in communities the same as the shoes manufactured by McElwain & Company at the same time. Will you tell us why not?

A. I said, judge, not acceptable. We did not admit they were not good enough, but the trade would not accept them for various reasons, the first of which was the detail of our work was not as good. We did not pay enough attention to the finish and the general detail, and we gave more attention to the service quality of the shoes; therefore, the retailers in the cities did not accept them. We made all kinds of efforts to convince them we were doing better for them, but we did not succeed.

Q. 247. You have changed the word "suitable" to "acceptable."

A. Well, it is synonymous in a way.

Examiner Bennett: That is all.

[Witness excused.]

[fol. 185] EVIDENCE FOR THE FEDERAL TRADE COMMISSION

F. A. SUDHOLT was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examiation.

By Mr. Brindley:

Q. 1. Please state your name, age, residence and occupation.

A. F. A. Sudholt; residence, St. Louis; treasurer of the company.

Q. 2. Treasurer of the International Shoe Company?

A. Yes, sir.

Q. 3. How long have you been treasurer of the International Shoe Company?

A. I do not know definitely. It must be about five or six years now. I had been secretary and treasurer up to this year and this year Mr. Woods was made secretary, and I have been secretary since its organization, and when Mr. Biggs became governor of the Federal Reserve Bank, I was made treasurer and that has been five or six years.

Q. 4. Were you secretary and treasurer of the International Shoe Company in 1921?

A. Yes, sir.

Q. 5. What familiarity have you with the transactions in 1923 between the International Shoe Company and Bennett, Limited?

A. My knowledge of that is simply that of secretary in recording the minutes, and as treasurer of course, in okaying and signing the checks for the purchase of the assets and the sale of that stock.

Q. 6. What was the net amount of money that the International Shoe Company paid for the properties, plants and assets purchased from the W. H. McElwain Company?

A. I do not know the exact figures. I suppose I would have to refer to my minutes to get that. Four million dollars and something. This is the check [indicating]. $4,063,125.89.

Q. 7. What is the document you hold in your hand?

A. This is a check on the National Bank of Commerce of New York, payable to the order of the W. H. McElwain Company.

Q. 8. For what amount?

A. $4,063,125.89.

Q. 9. Did you draw that check?

A. I signed it.

[fol. 186] Q. 10. As treasurer of the International Shoe Company?

A. Yes, sir.

Q. 11. On what bank was that drawn?

A. On the National Bank of Commerce of New York.

Q. 12. Did the International Shoe Company at that time have that amount of money on deposit with the National Bank of Commerce in New York City?

A. Yes, sir.

Q. 13. How did you secure that money?

A. Well, I suppose in the usual manner, by discounting some of our paper.

Q. 14. Was that amount of money on deposit in the National Bank of Commerce prior to the time you drew that check?

A. To the best of my recollection, it was.

Q. 15. Do you know how it was secured?

A. How it was secured?

Q. 16. Yes.

A. You mean obtained?

Q. 17. Yes.

A. As I said awhile ago, I guess it was through discounting some paper.

Q. 18. What do you mean by discounting some paper?

A. Some of the company's notes like we always do. In the course of our business, during times when our collections are slow, we naturally discount some commercial paper.

Q. 19. In order to meet the check just described did you borrow that amount of money from the National Bank of Commerce?

A. I would not say we borrowed that amount of money. We borrowed some money.

Q. 20. Can you ascertain the exact facts in reference to that transaction for me?

A. I think I could by referring to our books at that period.

Q. 21. But you have no independent recollection at this time?

A. No; no independent recollection without referring to the books.

Q. 22. How much money did the International Shoe Company secure from the Bennett, Limited, for the sale of the stock of the W. H. McElvain Company?

A. I do not know, unless it is this figure here. I do not remember just exactly. I imagine this is the figure here. [Witness indicating check for $4,063,125.89.]

Q. 23. Did you handle the money received from the Ben-
[fol. 187] net, Limited, for the sale of this stock?

A. Not personally. I suppose it went to the credit of the company in the bank. I did not handle it personally.

Q. 24. You were treasurer at that time?

A. Yes, sir.

Q. 25. But you did not handle it personally?

A. No, sir.

Q. 26. Did you keep books that would show a record of that transaction?

A. Yes; our books will show it, I think.

Q. 27. Will the books also show where the money was obtained from on which the check to the McElwain Company was drawn?

A. You mean where we got the money to pay it with?

Q. 28. Yes.

A. It ought to show it; yes. All of our transactions ought to be shown on the books.

Q. 29. Will you get your books and bring them up here and furnish us with that information?

A. I suppose I can.

Q. 30. Will you do so, please?

A. You want to know how we obtained the money?

Q. 31. Yes.

A. And what other information was it you want to know? What was the other question you want to have answered about the payment——

Q. 32. Payment from Bennett, Limited.

A. Made to us by Bennett?

Q. 33. Yes.

A. Yes; I think we can show that.

Q. 34. And the disbursements made by the International Shoe Company to the McElwain Company, and the source from which the money paid to the W. H. McElwain Company was derived?

A. Yes. Do you want that now?

Q. 35. Yes, I would like to have it right now. We will just wait on you if you will get it.

A. You will excuse me until I find that; is that the idea?

Examiner Bennett: Yes; we will take a little recess.

[At this point a short recess was had, after which the following proceedings were had:]

The Witness: I have here a statement of the National Bank of Commerce, which shows the proceeds of that note

and the debits and credits of checks handled in that transaction.

Q. 36. Is that the transaction which included the check [fol. 188] which you described a moment ago?

A. I have here a statement of the National Bank of Commerce, of our cash account with them. Under date of June 21, 1923, they show a charge of that check, $4,063,125.89. They also show a charge of $4,000,000 for a note charged to our account.

Q. 37. What was that note?

A. That was a note which they had previously discounted for us, in fact on the same day. That same statement shows a credit of $4,000,000, proceeds of that note. It also shows a credit of $4,061,093.72.

Q. 38. What is the date of that credit?

A. The 21st. All of these transactions are on the 21st.

Q. 39. Then, on June 21, 1923, the International Shoe Company executed its note to the National Bank of Commerce in New York for $4,000,000?

A. Yes, sir.

Q. 40. And that was deposited to the credit of the International Shoe Company's account in the National Bank of Commerce on what date?

A. June 21, 1923.

Q. 41. And that date also shows what other credit?

A. $4,061,093.72.

Q. 42. From what source was that credit derived?

A. That I do not know, unless it was a credit that was handled through Mr. King, our eastern representative.

Q. 43. It did not pass through your hands?

A. It did not pass through my hands.

Q. 44. It is true, then, that when this check of June 20, 1923, was drawn to the order of W. H. McElwain Company for $4,063,125.89, in order to meet that check the International Shoe Company executed its note to the National Bank of Commerce in New York for $4,000,000?

A. Yes, sir.

Q. 45. And the proceeds of the note for $4,000,000 went to the credit of the International Shoe Company?

A. Yes, sir.

Q. 46. And met the check to W. H. McElwain & Company?

A. Yes, sir.

Q. 47. The note to the National Bank of Commerce is dated, as I see, June 21, 1923, and you say the proceeds on [fol. 189] that note were deposited to the credit of the International Shoe Company on what date?

A. On June 21, 1923.

Q. 48. When was this note of the International Shoe Company to the National Bank of Commerce paid?

A. The same day.

Q. 49. On the same day?

A. According to the record I have here, June 21, 1923.

Q. 50. How was it paid?

A. They charge- our account with the amount.

Q. 51. So then the account of the International Shoe Company in the National Bank of Commerce in New York was credited on June 21, 1923, with $4,000,000?

A. $4,000,000 is right.

Q. 52. And on the same day charged with $4,000,000?

A. Yes, sir.

Q. 53. The payment of the note described?

A. Yes, sir.

Q. 54. That all occurred in one day?

A. We also on the same day received credit for $4,061,-093.72.

Q. 55. From what source did that credit come?

A. I do not know of my own knowledge. I presume it was handled in the east by Mr. King.

Q. 56. So this $4,000,000 note was made and paid the same day?

A. Yes, sir.

Q. 57. It did not add anything to the assets or liabilities of the International Shoe Company or take anything from them?

A. Not on that date.

Q. 58. Who deposited this note with the National Bank of Commerce?

A. I do not know.

Q. 59. Who paid it?

A. It was paid by the National Bank of Commerce at our request.

Q. 60. Who made that request?

A. That I do not know.

Q. 61. You did not do it?

A. I did not do it personally; no.

Q. 62. What did you have to do with this transaction of June 21, 1923, with the National Bank of Commerce?

A. I signed that note as treasurer, as you see there, and signed the check drawn against it.

Q. 63. The check is dated June 20, 1923, and the note is dated June 21, 1923. What is the meaning of those different dates?

[fol. 190] A. I suppose we counted on two days in transit for the check to reach the Bank of Commerce.

Q. 64. Do you know that or is that merely your——

A. That is of course according to our general understanding that it takes about two days for mail to reach New York.

Q. 65. From St. Louis, you mean?

A. From St. Louis; yes.

Q. 66. Can you tell me why this note dated June 21, 1923, to the National Bank of Commerce for $4,000,000 was placed with the National Bank of Commerce on one day and also paid the same day?

A. The only expression I can make is we wanted to save interest.

Q. 67. When is this note of June 21, 1923, payable?

A. Upon reading it over, it does not read like the ordinary demand note. "The undersigned hereby apply to the National Bank of Commerce of New York for a loan to the undersigned of $4,000,000 to be credited to the undersigned's account, which will be received by us as a trust fund."

Q. 68. So it has no due date then at all?

A. No due date.

Q. 69. What can you tell me about this check of June 20, 1923, payable to the order of the W. H. McElwain & Company, in reference to its history and disposition?

A. I do not know anything about it. The only way I can explain that this check was issued, it was made at the request of one of the officers of the company.

Q. 70. And it was drawn by you at the request of the appropriate officer?

A. Yes, sir.

Q. 71. What indorsements appear on that check?

A. This check is endorsed "For deposit in National Bank of Commerce of New York, W. H. McElwain & Company by Clifford P. Warren, president." Then it bears the paid stamp of the National Bank of Commerce, second teller, June 21, 1923.

Q. 72. What net amount was expended by the International Shoe Company as shown by their records in the transaction with the National Bank of Commerce for assets and plants and properties of the W. H. McElwain Company?

A. It seems this check is the only thing I have any knowledge of.

[fol. 191] Q. 73. Is that the check to the W. H. McElwain Company?

A. Yes, sir.

Q. 74. What is the amount of that check?

A. $4,063,125.89.

Q. 75. And on the same day that is charged to the account of the International Shoe Company, the account of the International Shoe Company was credited with the proceeds of the note you describe?

A. Yes, sir.

Q. 76. And also credited with the proceeds of what other check?

A. $4,061,093.72. I do not know whether that is a check or not. I did not handle that.

Q. 77. What is the difference in dollars and cents between those two amounts, the International Shoe Company paid out on its check and the amount received on another check?

A. $2,032.17.

Q. 78. That then is the net payment by the International Shoe Company on that transaction, isn't it?

A. I do not know.

Q. 79. You cannot explain that then?

A. I do not know anything about it; no, sir.

Q. 80. Who sent this $4,000,000 check of the International Shoe Company to the National Bank of Commerce?

A. I do not know. I presume Mr. Rand did. He signed it.

Q. 81. In other words, you did not?

A. I did not myself; no, sir.

Q. 82. Did you arrange for the payment of that note?

A. Not personally.

Q. 83. Did you have anything to do with the payment of it whatever?

A. No, sir.

Q. 84. And nothing to do with its execution or delivery except signing your name to it?

A. That is all.

Q. 85. Did you have anything to do with the execution of this check to the W. H. McElwain Company except draw it and sign your name?

A. Signed my name is all.

Q. 86. Did you have anything to do with the check for the other amount you have named, two thousand dollars slightly less than the McElwain check?

A. I did not know there was such a check drawn.

Q. 87. You did not know it went to the credit of the In-
[fol. 192] ternational Shoe Company at the National Bank of Commerce?

A. I did not know it at that time.

Q. 88. You did not know it until the report came back?

A. No, I did not know it.

Q. 89. In connection with your duties as treasurer of the International Shoe Company, do you frequently make such a note as the note of January 21, 1923, to the National Bank of Commerce?

A. No, sir; not as a rule.

Q. 90. It is an unusual transaction?

A. Unusual in that form; yes; we never, as a rule, use that form.

Q. 91. What form do you ordinarily use?

A. We have a small note about this size (witness indicating).

Q. 92. The ordinary commercial note?

A. The ordinary commercial note in which you promise to pay to yourself, and that is signed by the company's officers and indorsed by the company officer.

Q. 93. Carrying a specific due date?

A. Yes, sir.

Q. 94. Payable on demand at a date fixed therein?

A. Yes, sir.

Q. 95. Have you in your office any blank forms or copies of this note of June 21, 1923?

A. I do not know. I think not.

Q. 96. In whose handwriting is that note made out?

A. I filled in the amount and signed it as treasurer. Mr. Rand signed it as president of the company.

Q. 97. And the "International Shoe Company" was put on there how?

A. It was written in by Mr. Rand.

Q. 98. So the writing you made on this note consisted of the amount in both figures and words?

A. Yes, sir.

Q. 99. And then your signature?

A. Yes, sir.

Q. 100. How about the date?

A. That is not in my handwriting.

Q. 101. Do you know in whose handwriting it is?

A. I do not.

Q. 102. Was it dated at the time when your signature was attached to it?

A. I think not; I do not know that, or do not remember it.

Q. 103. You do not know whether it was attached to that note?

A. No, I do not.

[fol. 193] Q. 104. The International Shoe Company did not expend any money whatever in these transactions in regard to the note of June 21, 1923, and the check of the W. H. McElwain Shoe Company of June 20, 1923, except the sum of $2,032.17, did it?

A. It would appear that way from the debits and credits, although I do not know that is the sense in which this thing should be answered. Our checks show we paid $4,063,125.89.

Q. 105. And then received a credit of——

A. $4,061,093.72.

Q. 106. From a source you do not know?

A. From a source I do not know.

Q. 107. You simply do not know where that credit came from?

A. I did not know anything about it.

Q. 108. But the sum total of the transactions as shown by the statement and account of the International Shoe Company with the National Bank of Commerce in New

York, this note dated June 21, 1923, the check to W. H. McElwain Company of June 20, 1923, and the other check you have mentioned, simply amount to an expenditure by the International Shoe Company of $2,032.17, does it not?

A. That is in that difference—between those two transactions.

Q. 109. So far as the entire transaction is concerned the International Shoe Company expended the sum of $2,032.17?

A. There are some other entries here on the 21st. I do not know what they had to do with this, if anything.

Q. 110. Have they anything to do with it?

A. I do not know. There is cash statement here, "Payment of securities." I do not know what they mean.

Q. 111. The International Shoe Company secured from the National Bank of Commerce on June 21, 1923, the sum of $4,000,000?

A. Yes, sir.

Q. 112. And paid that amount the same day?

A. Yes, sir.

Q. 113. And did not pay any interest on that transaction?

A. There should not be any charge on that transaction if on the same day.

Q. 114. That account does not show any interest charged for the transaction, does it?

A. It might have been taken out in the calculation at the [fol. 194] end of the month. It shows a calculation here at the end of the month for daily balances.

Q. 115. Any further explanation of these transactions except what you have mentioned?

A. I think I have stated all I know about it.

Q. 116. Will you do me the kindness to look in your office and see if you can get a copy of the note of June 21, 1923—I mean a blank form?

A. Yes, I will see if I have it.

Mr. Brindley: That is all.

Cross-examination.

By Mr. Blake:

X Q. 117. Mr. Sudholt, as to June, 1923, since that time have you personally kept the books of the International Shoe Company?

A. No, sir; at no time have I kept the books of the company.

X Q. 118. The minutes of the directors' meetings, however, you have recorded?

A. Yes, sir.

X Q. 119. Then whatever action was taken at the directors' meetings you recorded?

A. Yes, sir.

X Q. 120. In your direct examination you at one point stated in response to a question as to whether or not these transactions at the National Bank of Commerce with respect to the $4,063,125.89 check, the $4,000,000 note, and another check for $4,061,093.72 has added to the assets or liabilities of the International Shoe Company, and your answer was they had not. I want to ask you now if that note for $4,000,000 which was put in the National Bank of Commerce was not a binding obligation on the International Shoe Company, and if it did not have to meet and pay that note?

Mr. Brindley: The note speaks for itself and that is a pure conclusion of the witness on it, and it is a legal proposition.

Mr. Blake: Then it is my position that his response to your question was purely a legal conclusion that is best evidenced by the note and the check.

Mr. Brindley: Not a bit.

Mr. Blake: Are you objecting to that question?

[fol. 195] Mr. Brindley: Yes, I will object to that question on that ground, that the instrument will speak for itself.

X Q. 121. I will ask you if the statement which you have before you there from the Bank of Commerce, does not show that an obligation for $4,000,000 was charged against the account of the International Shoe Company?

A. It does.

X Q. 122. I will ask you, too, if it does not show that the National Bank of Commerce paid out of the account of the International Shoe Company at that bank the sum of $4,063,125.89?

A. It does.

Mr. Blake: That is all.

Mr. Brindley: That is all.

By Examiner Bennett:

Q. 123. Do you know the initials on that note there?
A. I do not. I imagine the officers of the bank.
Q. 124. On the back I mean.
A. I do not know. I presume that is also an officer of the bank.

(Witness excused.)

Examiner Bennett: At this point we will take a recess until 1:30 this afternoon.

(Thereupon at 12 o'clock noon on May 29, 1924, a recess was had until 1:30 o'clock p. m. of the same day.)

1:30 p. m.

Examiner Bennett: Gentlemen, we will proceed with the hearing.

Byron A. Gray was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Brindley:

Q. 1. State your name, residence and occupation?
A. Byron A. Gray; 456 Florence Avenue, Webster Groves, Missouri; my occupation is auditor of the International Shoe Company.
Q. 2. How long have you been auditor for that company?
A. Since January of this year.
Q. 3. Were you connected with the company prior to that time?
A. For about fifteen years prior to that.
[fol. 196] Q. 4. In what capacity?
A. In the accounting department without definite title, but the duties of an assistant auditor for some time.
Q. 5. You are familiar with the books and records of the company, are you?
A. Yes, sir.
Q. 6. I am interested now in the kind and character and amount of the capital stock of the McElwain Company,

which was acquired by the International Shoe Company. Have you made an investigation of that?

A. There is an audited report here which will show what it was.

Q. 7. You then can give me the facts and figures about that stock?

A. I believe I can.

Q. 8. Can you give me the amount of the different kinds or classes of stock of the W. H. McElwain Company on May 11, 1921?

A. The amount outstanding on that date was 69,981 shares of first preferred, 52,000 shares of second preferred, 69,896 shares of common.

Q. 9. Can you tell me what the authorized capital stock was at that date?

A. I would have to refer to another balance sheet, which is not here. I haven't the knowledge myself. It is stated in Marwick-Mitchell's audit balance sheets at the end of that year, December, and I believe that to be correct, because it is certified to them. Mr. King has supplied me with the report. The first preferred was $7,140,000, second preferred $3,500,000, common $3,500,000, authorized.

Q. 10. Authorized?

A. Yes, sir.

Q. 11. How much of the authorized first preferred stock was issued and outstanding on May 11, 1921?

A. There had been issued $7,140,000, there was $141,900 worth of that stock in the treasury, leaving outstanding $6,998,100.

Q. 12. Was all of the authorized first preferred capital stock issued except the amount you have just named which was in the treasury?

A. Yes, sir.

Q. 13. How much of the authorized second preferred capital stock was issued and outstanding on that date?

[fol. 197] A. There had been issued $2,700,000; $100,000 was in the treasury; there was outstanding $2,600,000.

Q. 14. What is the difference between the amount of the outstanding second preferred capital stock and the authorized second preferred capital stock?

A. $900,000.

Q. 15. How much of the authorized common stock was outstanding on May 11, 1921?

A. $3,494,800.

Q. 16. What is the difference between the authorized common stock and the issued common stock on May 11, 1921?

A. $5,200.

Q. 17. How many shares of the first preferred stock of the W. H. McElwain Company were acquired by the International Shoe Company on May 11, 1921, and subsequent to that date?

A. 69,946.

Q. 18. How many shares of the second preferred capital stock was acquired by the International Shoe Company?

A. 52,000.

Q. 19. That is the full amount of the outstanding second preferred stock?

A. Yes, sir.

Q. 20. How much of the outstanding common stock of the McElwain Company was acquired by the International Shoe Company?

A. 69,896 shares.

Q. 21. The International Shoe Company then acquired on May 11, 1921, and subsequently all of the outstanding second preferred capital stock and all of the outstanding common stock of the W. H. McElwain Company, did it?

A. Yes, sir.

Q. 22. How many shares of the outstanding capital stock did the International Shoe Company not acquire?

A. Thirty-five shares of the first preferred stock.

Q. 23. Thirty-five shares of the first preferred stock of the W. H. McElwain Company then is all of the outstanding capital stock of that company that the International Shoe Company did not acquire?

A. That is what our records indicate.

Q. 24. And that is what you have ascertained from an examination of the records of the company?

A. Yes, sir.

Q. 25. How was the stock of the McElwain Company, which the International Shoe Company acquired, paid for?

A. The stockholders of the McElwain Company surrendered their stock to be exchanged for International stock [fol. 198] under the several options mentioned in the agreement, some cash, of course, entering into the transaction.

Q. 26. So the International Shoe Company paid for the

stock it acquired by issuing its own stock and also paying certain amounts of money, did it?

A. Yes, sir.

Q. 27. What classes of stock did the International Shoe Company issue in payment of the stock of the W. H. McElwain Company?

A. Preferred and common.

Q. 28. Are those the only two classes of stock that the International Shoe Company had outstanding?

A. Yes.

Q. 29. Tell me, if you can, how many shares of each kind of stock the International Shoe Company issued and delivered in payment of the stock of the McElwain Company which it acquired.

A. Our records show that we issued 52,670 shares of preferred stock and 118,028 shares of common stock.

Q. 30. On what basis were those shares of stock issued by the International Shoe Company, each share of common stock at so much and each share of the preferred stock at so much?

A. The value which was placed on the preferred stock of the International in arriving at a basis to exchange for McElwain was $109 per share for preferred stock.

Q. 31. And for the common stock?

A. $30 per share.

Q. 32. What was the value of the shares of preferred stock issued by the International Shoe Company at $109 per share?

A. The value of the 52,670 shares at $109, is $5,741,030.

Q. 33. What was the value of the common stock issued by the International Shoe Company at $30 per share in payment of the McElwain stock?

A. $3,540,840.

Q. 34. And what amount of cash was also paid to the McElwain stockholders by the International Shoe Company?

A. $181,729.20.

Q. 35. The total amount paid by the International Shoe Company in both stock and cash for the stock of the W. H. McElwain Company?

A. $9,463,599.22.

Q. 36. That is the total amount paid to all classes of stockholders of the W. H. McElwain Company?

A. I believe that is correct.

[fol. 199] Q. 37. Can you tell me the amount in stock and money which was paid or delivered by the International Shoe Company for the 69,946 shares of the first preferred stock of the W. H. McElwain Company?

A. I cannot from these records. I would have to make an examination before I could tell you whether that could be ascertained or not.

Q. 38. Tell me in your opinion at this time, if you can, the amount of stock and money that was paid by the International Shoe Company for each class of stock of the W. H. McElwain Company?

A. I doubt if we can state it exactly. I make that statement from my recollection of the statements of the Old Colony Trust Company on account of the several different options that the stockholders had in making the exchange.

Q. 39. On what basis was the first preferred stock of the W. H. McElwain Company exchanged by the holders of that stock?

A. I believe they had three options, and I think the various holders exercised all of those options at the time.

Q. 40. Isn't this true, in the offer made to the stockholders, wasn't each class of stock valued at a certain per cent of its face value?

A. Yes; the value placed on the first preferred stock in arriving at a basis for exchange was $82.50 per share, the second preferred $37.50, and the common $25.

Q. 41. What does that $82.50 per share mean?

A. $82.50 per share, which I believe had $100 par value.

Q. 42. And the other classes as well?

A. The second preferred was $37.50 at a $50 par value, and the common stock at $25 per share at $50 par value. That is my recollection.

Q. 43. On that basis which you have just mentioned, can you tell me approximately what amount of stock and money was issued and delivered by the International Shoe Company for the first preferred stock of the W. H. McElwain Company?

A. Using the basis of $82.50 per share on the number of shares of first preferred stock acquired by the International Shoe Company, the value was $5,770,545.

Q. 44. What amount of money and stock was given by the International Shoe Company for the second preferred

[fol. 200] stock of the McElwain Company which it acquired?

A. On the basis of $37.50 per share, 52,000 shares acquired by the International Shoe Company equaled the value of $1,950,000.

Q. 45. And continuing, tell me what was given for the common stock acquired by the International Shoe Company.

A. On the basis of $25 per share the 69,896 shares acquired by the International Shoe Company equal a value of $1,747,400. This makes a total of $9,467,945.

Q. 46. That is extremely near the actual amount paid by the International Shoe Company for the stock?

A. It should be, very close. The reason that it is not exact, of course, is we did not always pay exactly the agreed price for all of the stock acquired.

Q. 47. Give us the figures of the three amounts.

A. Our records indicate we paid $9,463,599.20.

Q. 48. And on the basis which you have just figured, it amounts to what?

A. $9,467,945, leaving a difference of $4,345.80.

Q. 49. What dividend did the preferred stock of the International Shoe Company carry?

A. Eight per cent.

Q. 50. Was that the percentage of dividend that was carried in 1921 when the stock you have just described was issued in payment of the McElwain stock?

A. Yes, sir.

Q. 51. Has it been continuously so?

A. Yes, sir.

Q. 52. And those dividends have been regularly met by the International Shoe Company?

A. Yes, sir.

Q. 53. There never has been a default, has there?

A. No, sir.

Q. 54. What dividend has been paid by the International Shoe Company on the common stock since the International Shoe Company of Delaware acquired the stock of the W. H. McElwain Company.

A. Fifty cents per share per quarter beginning July 1, 1921, up to and including January 1, 1923; beginning April 1, 1923, seventy-five cents per share per quarter up to and including October 1, 1923. Beginning January 1, 1924, one dollar per share per quarter.

Q. 55. Since May 11, 1921, the International Shoe Company has always regularly paid dividends on both its common and preferred stock?

A. Yes.

[fol. 201] Q. 56. There has never been a single default, has there?

A. No, sir.

Mr. Brindley: I believe that is all from this gentleman.

Cross-examination.

By Mr. Blake:

X Q. 57. What is the present market value of the International Shoe Company preferred stock?

A. The last quotation I remember seeing was $116.

X Q. 58. What is the present market value of the International Shoe Company's common stock?

A. $75 a share is the last quotation I saw.

X Q. 59. The common stock of the International Shoe Company, is it a par value stock?

A. It is without a nominal or par value.

X Q. 60. Mr. Gray, do your records show, or can you tell us from your records, what the International Shoe Company did with respect to placing orders with the W. H. McElwain Company for shoes at the time of or immediately after the acquisition of the W. H. McElwain Company?

A. Just about the date of the acquisition the International Shoe Company placed an order with the McElwain Company, and my recollection is it was an order for about 36,000 pairs; I remember that because it came up at another time. By the end of 1921 the McElwain factories had produced for the International Shoe Company 794,000 pairs of shoes.

X Q. 61. Have you any records that show the quantities produced for the International Shoe Company by the McElwain factories in 1922 and 1923?

A. In 1922 58 per cent of the production of the McElwain Company factories was for International Shoe Company's sales branches, amounting to 4,444,206 pairs.

X Q. 62. What percentage were taken in 1923 by the International Shoe Company?

A. Approximately 56 per cent.

X Q. 63. So that in that period of time the International Shoe Company has taken more than 50 per cent of the production of the W. H. McElwain Company factories?

A. They have since the first of 1922.

X Q. 64. When we refer to the International Shoe Company in stating those figures you refer to the western organization, International Shoe Company of Delaware, as [fol. 202] it existed prior to the acquisition of the W. H. McElwain Company?

A. Exactly.

X Q. 65. Have you records, Mr. Gray, which will show the exact amounts in cash that the International Shoe Company advanced at the time or subsequent to the acquisition of the W. H. McElwain Company? If so, just read the dates and the amounts into the record.

A. This statement does not show the date and amount of every advance.

X Q. 66. How does it show it?

A. It gives the standing of the financing account, as we called it, on the International Shoe Company's books at the close of each month, beginning with the month of May 1921.

X Q. 67. Just read that into the record.

A. May 31, 1921, $900,000.

X Q. 68. You mean by that at the end of May 1921 the W. H. McElwain Company owed the International Shoe Company that much for money advanced to them?

A. For cash actually advanced. June 30, 1921, $5,300,000. July 31, 1921, $8,100,000. August 31, 1921, $11,300,000. September 30, 1921, $11,650,000. October 31, 1921, $11,650,000. November 30, 1921, $11,850,000.

In addition to that there was an account carried representing the transfers of merchandise and materials between two companies which reduced the actual indebtedness of the W. H. McElwain Company to the International Shoe Company at the end of the year to $11,235,778.14. This is the end of the year, November 30, 1921.

X Q. 69. Mr. Gray, have you prepared some figures showing the total production of shoes in the United States, in pairs and in value, and also the figures as to the production in pairs and values of the International Shoe Company and W. H. McElwain Company for some years?

A. They have been prepared under my supervision; I did not prepare them myself.

X Q. 70. Have you checked the figures to satisfy yourself they are correct?

A. Enough to satisfy myself of their accuracy; yes.

Mr. Blake: We would like to introduce that sheet as Respondent's Exhibit Number 28.

[fol. 203] X Q. 71. Mr. Gray, give us the sources of information that you have resorted to in getting these figures.

A. The United States Census Bureau reports, information secured from the Babson statistical organization, the International Shoe Company's records on its own production, and information furnished by former McElwain officers on some of McElwain's production prior to the time we had any record on it at St. Louis.

X Q. 72. Is that latter information taken from the records of the W. H. McElwain Company?

A. Yes, sir.

By Examiner Bennett:

Q. 73. Will you go a little further into the census reports; what are their character? I am not acquainted with them.

A. Just a census of the leather industries that give total production and value of output of shoe factories.

Q. 74. Was it for a definite date?

A. Very definite; yes, sir

Q. 75. Is it a periodical study?

A. We have given the figures from that census bulletin for 1919, 1921 and 1922.

Q. 76. It covers those three years, does it—this bulletin does?

A. Yes, sir.

Q. 77. What is the Babson service? Tell me what it is. What sort of an organization is it?

A. I do not know much about it. I do not know anything about it, I should say.

Q. 78. Tell me what figures you took from it?

A. We have a letter from them in which they give the production and the value of the shoes produced in the United States in the certain years that are not given in the census reports.

Q. 79. Do you know anything about the source of their information?

A. I do.

By Mr. Brindley:

Q. 80. This statement you are speaking about and submitting here shows for each year the source from which you derived your figures, does it?

A. It does.

Q. 81. The only figures contained in these sheets which you know to be correct are the figures showing the production or output of the International Shoe Company, are they?

A. And the McElwain Company, I would say, for 1922, for example.

Q. 82. I understood you to say that you secured some of [fol. 204] your figures about the McElwain Company from former officers of the company?

A. That is correct.

Q. 83. You simply took their statements and embodied them in?

A. Yes, sir.

Q. 84. You know nothing about the correctness of the reports which you secured from other sources?

A. No, I do not.

Q. 85. You simply accepted them in arriving at this statement?

A. That is correct.

Mr. Brindley: That is all I care to ask.

Examiner Bennett: It will be received as the Respondent's Exhibit Number 28.

[Said statement was thereupon marked, for identification, "Respondent's Exhibit No. 28, Witness Gray," was received in evidence and is forwarded herewith.]

By Mr. Blake:

X Q. 86. Mr. Gray, in the year 1921, according to those figures what percentage in pairs of the shoes produced in the United States were produced by the International Shoe Company alone?

A. 5.02 per cent.

Examiner Bennett: That covers all classes of shoes?

X Q. 87. My question was as to 1921, Mr. Gray.

A. I beg your pardon; that is an error on my part. I would like to change that to 7.34 per cent.

X Q. 88. What percentage of the shoes produced in the United States were produced by the McElwain Company, on the basis of pairs?

A. In 1921, 1.33 per cent.

X Q. 89. On that basis, what was the combined production in percentage of the two companies for 1921?

A. 8.67 per cent.

X Q. 90. On the dollar basis for the same year what was the percentage of shoes produced by the International Shoe Company?

A. 6.68 per cent.

X Q. 91. And the percentage produced by the W. H. McElwain Company?

A. 1.22 per cent.

X Q. 92. Making the total for the two companies of how much?

A. 7.90 per cent.

X Q. 93. Take the year 1923; in that year what percentage of the shoes produced in the United States were pro- [fol. 205] duced by the International Shoe Company, in numbers of pairs?

A. 9.75 per cent.

X Q. 94. And what percentage were produced by the McElwain factories considered separately from the International Shoe Company, in pairs?

A. 2.30 per cent.

X Q. 95. Making a combined percentage of production in the United States of how much for the two companies?

A. 12.5 per cent.

X Q. 96. On a basis of dollars in value what percentage in the same year was produced by the International Shoe Company independent of the W. H. McElwain Company?

A. 9.11 per cent.

X Q. 97. What percentage was produced by the W. H. McElwain Company independent of the International Shoe Company?

By Examiner Bennett:

Q. 98. Does that include shoes other than leather shoes?

A. No, except shoes that are made with cloth tops in place of leather, such as satin shoes, or something of that sort.

Q. 99. Are all of the statistics uniform in that respect or in that regard? That is, do the census statistics and the Babson statistics cover just the lines of shoes, and lines of shoes only, covered by the International and McElwain?

A. I believe that it is close enough to the same class of shoes because the Government statistics separate their shoes such as athletic shoes and slippers and what they call canvas shoes, and things of that sort, that neither of these companies make.

Q. 100. They are not included?

A. They are not included in our figures either way, either the Government's figures or ours.

By Mr. Blake:

Q. 101. Mr. Gray, have you also prepared from the records of the W. H. McElwain Company and the International Shoe Company a sheet showing the amounts in dollars of shoe sales of the two companies for the years 1919 to 1923, inclusive?

A. Yes, sir.

Mr. Blake: We would like to offer that as Respondent's Exhibit Number 29.

[fol. 206] By Mr. Brindley:

Q. 102. What does this sheet show?

A. The sales of the two companies, in dollars and cents.

Q. 103. For the year- 1919 to 1923 inclusive?

A. Yes, sir.

By Examiner Bennett:

Q. 104. The other figures are figures of manufacture?

A. Yes, sir.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 29, Witness Gray."]

By Mr. Blake:

X Q. 105. Mr. Gray, I will ask you if the figures on that sheet represent orders taken or goods actually shipped and delivered?

A. They represent shoes and other merchandise actually shipped and billed and charged to customers on the books.

X Q. 106. I notice on that sheet that in the year 1921 you have added an item showing the value of the shoes that were sold by W. H. McElwain Company to International Shoe Company, and that same item appears in the year-1922 and 1923. Will you read the figures on this sheet for the years 1921, 1922 and 1923?

A. The McElwain sales to the International Shoe Company in the year 1921 was $2,652,738; in 1922,, $10,212,000; in 1923, $10,096,000.

[No cross-question numbered 107.]

X Q. 108. The figures that you have given there, do they represent the sales values of the shoes?

A. All of those figures represent sales values of shoes.

By Examiner Bennett:

Q. 109. Where is that sales value reckoned F. O. B. car—sold F. O. B. car?

A. Yes, F. O. B. cars, wherever the sales branch is located, St. Louis or elsewhere, with practically no exception; there are circumstances under which a slight allowance is made for freight.

Q. 110. Do your sales cost figures include any profit? That is what you mean by sales value?

A. Yes, sales value includes profit.

Q. 111. On about what basis?

A. I could not answer that, except our financial statement shows at the end of the year what our profit is on the sales.

Examiner Bennett: Exhibit 29 is received.

[Said exhibit having been previously identified as "Re-
[fol. 207] spondent's Exhibit No. 9, Witness Gray," was received in evidence and is forwarded herewith.]

By Mr. Blake:

X Q. 112. Mr. Gray, I hand you a paper which I will ask you to identify.

A. I recognize the sheet as an extract or copy of the income account and balance sheet of the W. H. McElwain Company for the fiscal year ending May 31, 1920.

Mr. Blake: We would like to introduce that as the Respondent's Exhibit Number 30.

Examiner Bennett: It will be received as Respondent's Exhibit Number 30.

[Said document was thereupon marked for identification "Respondent's Exhibit No. 30, Witness Gray," was received in evidence and is forwarded herewith.]

X Q. 113. State what that exhibit shows with respect to the surplus of the company at that time.

A. The surplus of the W. H. McElwain Company at May 31, 1920, was $3,888,440.73.

X Q. 114. I now hand you another sheet and will ask you to identify that sheet.

A. I recognize this as balance sheet of the W. H. McElwain Company as at May 31, 1921.

Mr. Blake: We offer that as the Respondent's Exhibit Number 31, Mr. Examiner.

Examiner Bennett: It is received.

[Said document was thereupon marked, for identification, Respondent's Exhibit No. 31, Witness Gray," was received in evidence and is forwarded herewith.]

X Q. 115. What does that sheet show with respect to the surplus of W. H. McElwain Company as of May 31, 1920?

A. Shows a surplus of $3,888,440,73.

X Q. 116. I hand you now Respondent's Exhibit Number 1 and ask you if you can identify that as the balance sheet of the W. H. McElwain Company as of April 30, 1921?

A. I recognize it as a copy of balance sheet of the W. H. McElwain Company as at April 30, 1921.

X Q. 117. What does that show with respect to any surplus of the W. H. McElwain Company?

[fol. 208] A. This balance sheet did not show a surplus of the company; it shows a net value for the common stock after deducting the deficit.

X Q. 118. In other words, at April 30, 1921, the surplus of $3,888,000 of W. H. McElwain Company had disappeared and the common stock of the company at that time showed on that sheet of having a total value of some $69,000; is that true?

A. $69,532.67.

X Q. 119. I hand you another sheet which I will ask you to identify.

A. This is a copy of the balance sheet of the W. H. McElwain Company as at May 31, 1921.

X Q. 120. What does that balance sheet show with respect to the surplus of W. H. McElwain Company?

A. Shows a deficit of $4,382,136.70.

Mr. Blake: We offer that as the Respondent's Exhibit Number 32, Mr. Examiner.

Examiner Bennett: It is received.

[Said balance sheet was thereupon marked, for identification, "Respondent's Exhibit No. 32, Witness Gray," was received in evidence and is forwarded herewith.]

X Q. 121. I hand you another sheet and ask you to identify that.

A. This is a copy of W. H. McElwain Company balance sheet as at November 30, 1921.

Mr. Blake: We offer that, Mr. Examiner, as the Respondent's Exhibit Number 33.

Examiner Bennett: It will be received.

[Said balance sheet was thereupon marked, for identification, "Respondent's Exhibit No. 33, Witness Gray," was received in evidence and is forwarded herewith.]

X Q. 122. Mr. Gray, who prepared the figures for these different balance sheets and financial statements that you have just identified?

A. The April 30, 1921, balance sheet was copied from the certificate of Harvey L. Chase & Company, public accountants of Boston, and I believe the figures were prepared by the accountants of the McElwain Company verified by Chase & Company.

X Q. 123. As to the May 31, 1921, balance sheet which you [fol. 209] have identified, by whom were the figures prepared?

A. That was copied from a certified statement of Harvey L. Chase & Company, also made from the books of the McElwain Company.

X Q. 124. Were the books of the McElwain Company at that time still in the possession and handled by McElwain employees?

A. They were at Boston.

X Q. 125. What about the figures for November 30, 1921?

A. It was copied from a statement of Marwick, Mitchell & Company, accountants and auditors, prepared from the books of the W. H. McElwain Company, which were kept by McElwain's accounting department in Boston.

X Q. 126. Who took the inventory of November 30, 1921, which is used in that statement?

A. The McElwain Company employees.

X Q. 127. Mr. Gray, I will ask you to take the May 31, 1920, statement and the November 30, 1921, statement and show the total loss in condition of the W. H. McElwain Company between those two dates?

A. The deficit on November 30, 1921, was $9,103,076.39; the deficit on May 31, 1921, was $4,382,000.

X Q. 128. My question was to show the loss in condition between May 31, 1920, and November 30, 1921?

A. I beg your pardon. According to that the surplus of the McElwain Company on May 31, 1920, was $3,888,440.73, showing a reduction in the net worth of the company from May 31, 1920 to November 30, 1921, of $12,991,517.32.

X Q. 129. Using those two balance sheets again, for the same dates, will you tell us what the shrinkage in working capital of the W. H. McElwain Company was between May 31, 1920, and November 30, 1921.

A. I would say that the shrinkage was the same amount.

X Q. 130. Indicate in figures what was the working capital as of May 31, 1920, and the working capital as of November 30, 1921?

A. Would you mind telling me, Mr. Blake, just what you mean by working capital?

X Q. 131. I mean by that the difference between the current assets and the current liabilities on the two dates.

[fol. 210] A. All right; I wasn't sure of just what your meaning of it was. On May 31, 1920, the net quick assets exceeded the current liabilities by $13,503,920.63. On November 30, 1921, the current liabilities exceeded the current assets by $965,895.23, a net reduction in working capital during that period of $14,469,815.86.

X Q. 132. Mr. Gray, is it not a fact that even after November 30, 1921, there developed in the W. H. McElwain Company other losses which had not been ascertained up to that time?

A. After November 30, 1921?

X Q. 133. Yes.

A. Yes.

X Q. 134. Now, subsequent to the losses that were disclosed by the April 30, 1921, statement, all of the losses that showed up in the McElwain statements which you have shown here fell upon the International Shoe Company as principal stockholders, chiefly, did it not?

A. Yes, sir.

X Q. 135. Have you computed approximately how much the International Shoe Company, not in dollars but in proportion of value, paid for this W. H. McElwain Company stock? A. I have made the statement before that the purchase price was over twice the real value.

X Q. 136. Refer to that November 30, 1921, balance sheet and tell us as to that date what were the values of the several classes of the W. H. McElwain Company stock.

A. Allocating all of the net worth of the company to the first preferred stock gives a value on November 30, 1921, of $57.01 per share, leaving no value to the second preferred and common stock.

Mr. Blake: That is all.

Redirect examination.

By Mr. Brindley:

Q. 137. What are those three balance sheets you have before you there?

A. I have about five there, if you will pardon me.

Q. 138. You have just referred to three, have you not?

A. May 31, 1920, May 31, 1921 and November 30, 1921.

Q. 139. What does the balance sheet of May 31, 1920, show as to the surplus of the W. H. McElwain Company?

A. It shows a surplus of $3,888,440.

[fol. 211] Q. 140. What does the next balance sheet, that is April 30, 1921, show?

A. May 31, 1921, that was the end of their fiscal year.

Q. 141. May 31, 1921, what does that show?

A. That shows a deficit of $4,382,136.

Q. 142. What is the date of the next balance sheet?

A. November 30, 1921.

Q. 143. What does that statement of November 30, 1921, show?

A. A deficit of $9,103,076.

Q. 144. The greater part of the deficit then occurred between May 31, 1921 and November 30, 1921?

A. No; prior to that; we had a surplus of $3,888,000.

Q. 145. When?

A. On May 31, 1920. That was converted into a deficit of $4,382,000 by the following May 31st, or a total of over $8,000,000, while between May 31, 1921 and November 30, 1921, the increase was four million and a fraction.

Q. 146. From what to what?

A. From $4,382,800 to $9,103,076.

Q. 147. How much had the International Shoe Company advanced to the W. H. McElwain Company on June 1, 1923?

A. I haven't that information right here.

Q. 148. What were those figures you gave us a few moments ago about money advanced?

A. That was in 1921.

Q. 149. The money advanced then was from May 31, 1921 to November 30, 1921?

A. Yes sir.

Q. 150. And your figures of $11,850,000 on November 30, 1921, means the total amount of money that had been advanced to W. H. McElwain Company by the International Shoe Company up to that date?

A. That is correct.

Q. 151. Did it advance any money to the McElwain Company subsequent to November 30, 1921?

A. There was a constant fluctuation in this financing account every month subsequent to this.

Q. 152. Have you any figures which would show how much money the International Shoe Company had advanced to the W. H. McElwain Company up to and including June 1, 1923?

A. I could give you a statement of the standing of the [fol. 212] W. H. McElwain Company's account on International Shoe Company's books on that date, which would cover, of course, all money advanced to them and all transactions as to shoes they had made for this company, and so forth.

Q. 153. Do you know how much the W. H. McElwain Company owed the International Shoe Company in June, 1923?

A. I could get it from the books; I haven't it here.

Q. 154. How much does the W. H. McElwain Company owe the International Shoe Company now?

A. Nothing.

Q. 155. How is that?

A. Its account isn't on our books.

Q. 156. You can get the W. H. McElwain Company account, can't you?

A. We haven't any account with the W. H. McElwain Company now.

Q. 157. What became of the account so far as your books or records go?

A. The account was closed on the books.

Q. 158. When?

A. I don't know the date. Whenever the International Shoe Company acquired all of the assets of the McElwain Company, whenever that was.

Q. 159. How was the account closed?

A. I could not say without reference to the journal entries.

Q. 160. Can you get that account and bring it up here, right at once?

A. I believe so.

Q. 161. Will you do so?

A. Yes.

Q. 162. How does the International Shoe Company rank in size and capacity with other shoe manufacturing concerns in the United States?

A. I believe it is the largest.

Mr. Brindley: That is all, until we get the books.

Examiner Bennett: I will ask him two or three questions.

By Examiner Bennett:

Q. 163. What items showed the shrinkage that you speak of; what capital items?

A. We haven't any analysis showing just where the shrinkage occurred, but the quick assets were reduced from——

Q. 164. Will you state what you mean by that term or what you include in that term?

A. Cash, accounts receivable, merchandise inventories and prepaid expense items.

Q. 165. Take them, item by item, and say what shrinkage [fol. 213] each showed.

A. Would you like exact figures, or approximately, so as not to take the time to figure that up?

Q. 166. Approximately.

A. The cash was decreased from May 31, 1920 to November 30, 1921, $355,000; the accounts and notes receivable, approximately $5,016,000. The merchandise inventory reduced $7,816,000.

Q. 167. Does that include material as well as made-up stuff?

A. Yes; all raw materials and finished merchandise. The current liabilities were stated in total on May 31, 1920, balance sheets as debts of the McElwain Company; they were increased from $12,687,000 to $13,701,000, or approximately $1,014,000.

Q. 168. What is the next rival to the International Shoe Company in size?

A. To the best of my knowledge, Endicott-Johnson Shoe Company.

Q. 169. Is that nearly the same size or decidedly smaller?

A. I only know from newspaper reports or some other statement of sales, and it is my recollection that their sales were somewhere around $70,000,000, or were last year.

Q. 170. How many of those major companies are there, that is, running with sales up into forty or fifty millions a year?

A. I do not know.

By Mr. Brindley:

Q. 171. You have before you the account in which the W. H. McElwain Company——

A. On the International Shoe Company's books, the account to which was charged all of the cash advanced to them and to which was credited the value of the shoes as shipped to us, and all transactions entering into it—just a current open account showing their indebtedness.

Q. 172. A short time previously in your testimony you stated that on November 30, 1921, the International Shoe Company had advanced to W. H. McElwain Company the sum of $11,850,000?

A. Correct.

Q. 173. That is correctly shown by the books?

A. Yes, sir.

Q. 174. Do the books show what amount had been advanced to the W. H. McElwain Company on June 15, 1923?

A. They do not. The ledger account shows on May 31, 1923, a balance due from the McElwain Company of $11,943,704.55.

[fol. 214] Q. 175. That is the last balance you show on that account?

A. That is balance on May 31st; during the month of June, of course, the closing entry came through, closing that out, when the assets were acquired and the liabilities assumed.

Q. 176. What is the date of the closing entry on that account?

A. All of the entries are dated on the books on the last day of the month, under our plan; all of the entries for June came in under June 30th, on an account of this kind.

Q. 177. When was the actual entry made closing it?

A. The actual entry made on June 30th.

Q. 178. How was the account closed?

A. It was closed, I would say, by our setting up on the books of the International Shoe Company all of the assets and all of the liabilities of the W. H. McElwain Company. Naturally an account of this same amount appeared as a current liability on the W. H. McElwain Company books and they owed the International Shoe Company that much, and that account was just as much one of the liabilities as-

sumed by us and closed out when they acquired it as any other. I do not know as I make it very clear.

Q. 179. The account of the W. H. McElwain Company to the International Shoe Company was never paid, was it?

A. I do not know how to answer that; I do not know.

Q. 180. It don't show any credit on the books there, does it? Explain these entries to me. What is the last balance that W. H. McElwain Company owes?

A. That is the last balance I just gave you.

Q. 181. When did it owe that amount?

A. May 31, 1923.

Q. 182. When did it pay that amount?

A. I don't know.

Q. 183. Has it ever been paid?

A. No.

Q. 184. Does the W. H. McElwain Company still owe it?

A. No.

Q. 185. How did you get rid of the account?

A. Because the International Shoe Company, as I understand it, bought the assets and assumed the liabilities, so they naturally assumed it.

Q. 186. It just assumed this liability of the W. H. McElwain Company to itself?

A. Yes; I presume that was among the liabilities assumed.

[fol. 215] Q. 187. This account, as it stands on your books, of the W. H. McElwain Company,—how is it balanced?

A. It is closed.

Q. 188. You cannot tell me how you closed it?

A. Not in direct answer to your question, but I could better after analysis.

Q. 189. As I understand you, you say on May 31, 1921, the W. H. McElwain Company owed the International Shoe Company $11,943,704.55?

A. Yes, sir.

Q. 190. Is that correct?

A. Yes, sir.

Q. 191. It does not owe anything now, does it?

A. I would say no.

Q. 192. It did not owe anything on the fifteenth day of June, 1923, did it?

A. Our entries are dated June 30th. Everything that came through in June is summarized and goes on on that date. On June 30th they did not owe anything.

By Examiner Bennett:

Q. 193. Is there a journal where you show that transaction in more detail?

A. Yes, sir.

By Mr. Brindley:

Q. 194. So the account was closed on June 30, 1923, was it?

A. Yes, sir.

Q. 195. And you don't know what became of this indebtedness of $11,943,704.55?

A. I cannot say right now without an analysis of the account to show just what the entries are. That is too far back for me to remember.

Q. 196. Is there anything on this account to show what became of it?

A. The journal entry is on there which must represent the transaction as carried on the books of the International Shoe Company; there are several of them under date of June 30th.

Q. 197. What are they?

A. There are three debits and two credits.

Q. 198. What are the debits under date of June 30th?

A. They only refer to the journal page.

Q. 199. How many?

A. Three under date of June 30th.

Q. 200. What are those items?

A. $2,273,948.04; $883,472.58; $557,894.15.

Q. 201. Those are the charges?

A. Charges; yes.

Q. 202. Do they have any credits during this period?

A. $557,894.15; $15,101,125.17.

[fol. 216] Q. 203. What is the date of that last credit entry?

A. Those entries are all dated June 30th.

Q. 204. And that closed the account?

A. Yes, sir.

Mr. Brindley: I believe that is all.

Recross-examination.

By Mr. Blake:

X Q. 205. As a matter of fact, wasn't this account closed by contract under which the International Shoe Company assumed the liabilities of the W. H. McElwain Company, and didn't that contract thereby cancel the obligation of the W. H. McElwain Company to International Shoe Company?

A. I don't know what the contract was, and I did not make these entries. My understanding of it is that we purchased the assets and assumed the liabilities, and that necessarily closed this account.

Mr. Blake: That is all.

Mr. Brindley: That is all.

[Witness excused.]

STANLEY KING was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Brindley:

Q. 1. State your name, residence and occupation, Mr. King.

A. Stanley King; Boston; eastern representative of the International Shoe Company.

Q. 2. In what other business, occupation or employment are you engaged?

A. No other at the present time.

Q. 3. How long have you been employed by the International Shoe Company?

A. Since June 1923.

Q. 4. What date in June?

A. About the first of June.

Q. 5. In what business, occupation or employment were you engaged prior to that time?

A. Vice-president of W. H. McElwain Company.

Q. 6. Are you still vice-president of W. H. McElwain Company?

A. I am not.

Q. 7. When did you cease to be vice-president of that company?

A. About the first of June, 1923.

Q. 8. How long were you employed by or connected with [fol. 217] the W. H. McElwain Company?

A. I entered the employ of W. H. McElwain Company in September 1906 and was continuously in their employ until the spring of 1917, when I resigned and went to Washington. I returned to their employ in the fall of 1919, and was on leave of absence in the winter of 1919-1920 and was actively engaged in the business from April 1920 on.

Q. 9. In what business was the W. H. McElwain Company engaged while you were connected with it?

A. Manufacture and distribution of shoes.

Q. 10. Was it a corporation?

A. It was.

Q. 11. Under the laws of what state?

A. When I went with the company it was a corporation under the laws of the State of Maine. It was reincorporated under the laws of the State of Massachusetts in 1911.

Q. 12. Is it still in existence?

A. I do not know. So far as I know it is, but I have no actual knowledge.

Q. 13. Where was its principal office?

A. Boston.

Q. 14. Did it own any shoe factories?

A. It did.

Q. 15. How many?

A. At what date?

Q. 16. While you were connected with them?

A. In 1921 it owned shoe factories in Keene, New Hampshire, Newport, New Hampshire, and Claremont, New Hampshire, and Manchester, New Hampshire.

Q. 17. What facilities were located at these places you have named?

A. I say owned factories at these places.

Q. 18. Did it own any shoe factories at any other places?

A. I believe it did not. I am answering your question as to ownership, Colonel Brindley.

Q. 19. Did it operate any factories?

A. Yes; it operated factories in addition to those places at Nashua, New Hampshire, and it operated a factory at Manchester, a factory it did not own. It operated a tannery in Merrimack, New Hampshire, which it owned, and operated a tannery at Manchester, New Hampshire, which it owned.

Q. 20. What other facilities or instrumentalities connected with their business, the shoe business, did it own and operate?

A. It owned and operated box factory, power plant, sole [fol. 218] leather factories, a couple of cutting factories at Manchester; it operated distributing houses in Boston, New York, Chicago, Columbus, San Francisco. It owned the entire capital stock of a company, except qualifying shares, which operated a distributing branch in Kansas City. It owned the majority of the voting stock of a distributing branch in New York known as the Nathaniel Fisher Company.

Q. 21. Have you with you a copy of the certificate of incorporation or the charter of the W. H. McElwain Company?

A. I have not.

Q. 22. Have you any statement issued by the officers of that company showing its location, principal place of business, capital stock, and so forth?

A. I have the May 31, 1920 annual report of the company, showing, I think, most of those facts.

Q. 23. What kind or style of shoes were manufactured and sold by the W. H. McElwain Company while you were connected with it?

A. The McElwain Company, while I was connected with it, made men's and boys' dress shoes. At one period it made a few women's dress shoes and discontinued their manufacture. That was a good many years ago. It made them only for a few months.

Q. 24. What kind of shoes was it manufacturing and selling May 11th, 1921?

A. Men's and boys' dress shoes, and possibly a few misses' shoes.

Q. 25. What disposition was made of the shoes manufactured by W. H. McElwain Company?

A. It sold the shoes through its own branches to retailers. It sold direct to large retailers in cities and it sold to independent jobbers.

Q. 26. What was your statement about selling direct to retailers?

A. It sold through its branches to retailers. It sold direct to retailers from the factory and it sold to independent jobbers.

Q. 27. Did it ship the goods or shoes which it manufactured or sold to purchasers among the several states of the United States?

A. It shipped them to many states; I cannot say as to how many states.

Q. 28. Did it ship generally throughout the United States?

A. It shipped shoes to different portions of the United [fol. 219] States, clear to the Pacific coast. I do not know whether generally to all of the states or not.

Q. 29. But it shipped at least as far from its factories and warehouses in New England to the Pacific coast?

A. Yes; it shipped to its own branch in San Francisco.

Q. 30. Did it own that branch in whole?

A. Yes; that was a part of the corporation.

Q. 31. What did the branch sales agency on the Pacific coast do with the shoes it received from the company?

A. Sold them to retailers on the coast.

Q. 32. In the several different states on the coast?

A. Yes.

Q. 33. In the western section of the United States?

A. Three coast states.

Q. 34. Isn't it true, then, that the shoes manufactured by the W. H. McElwain Company were shipped practically to all states of the United States?

A. I cannot say.

Q. 35. Shipped in by far the largest number of them?

A. Shipped to the majority of them; yes, sir.

Q. 36. Have you in your files a list of retail dealers in shoes to whom the W. H. McElwain Company sold and shipped its shoes in 1921 and prior thereto?

A. I have such a list, which Mr. Blake now has.

Mr. Brindley: It is here, is it, Mr. Blake?

Mr. Blake: I didn't know he left it with me. It is down in my files somewhere, I guess.

The Witness: It is a copy which we supplied to the Federal Trade Commission, which I turned over to you when I came out here.

Mr. Blake: I will obtain it for you then.

Q. 37. What was your connection with the W. H. McElwain Company on December 29, 1922?

A. I was vice-president and treasurer.

Q. 38. And actively connected with the management of the company at that time?

A. I was.

Q. 39. Have you in your file a copy of letter written to the [fol. 220] Federal Trade Commission December 29, 1922 by W. H. McElwain Company?

A. I have.

Q. 40. That letter gave certain details regarding the distribution of shoes produced by McElwain Company for the fiscal year ending May 31, 1921?

A. Yes, sir.

Q. 41. And includes a list of customers in the various states?

A. It did.

Q. 42. Have you in your files copies of the list of customers?

A. I have.

Q. 43. That list of customers shows that the W. H. McElwain Company disposed of its shoes during the fiscal year ending May 31, 1921, to what classes of dealers?

A. Dealers and jobbers.

Q. 44. Do you include what is listed there as wholesalers in your definition of jobbers?

A. I do; yes. Retailers, wholesalers and jobbers.

Q. 45. So you include wholesalers in the word "jobbers"?

A. Yes, I do.

Q. 46. For the fiscal year ending May 31, 1921, the McElwain Company then sold its shoes to wholesale retailers in shoes, to jobbers in shoes, and retailers in shoes, did it?

A. It did.

Q. 47. Examine the list of retail dealers which you have and tell me in what states those dealers are located, or were located, for the year ending May 31, 1921.

A. In New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, District of Columbia, Ohio, Indiana, Illinois, Michigan, Wisconsin, West Virginia, Kentucky, Tennessee, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Iowa, Oklahoma, Texas, Minnesota, Utah, Colorado, Washington, Oregon, California; Newfoundland; Hawaiian Islands.

Q. 48. What kinds or styles of shoes did the W. H. McElwain Company sell in these states you have mentioned?

A. Men's and boys' dress shoes.

Q. 49. In what section of the country was the larger part of the shoes manufactured by W. H. McElwain Company sold?

A. In the section north of the Ohio River and east of Illinois.

[fol. 221] By Examiner Bennett:

Q. 50. Does that include Illinois?

A. I did not mean to include Illinois.

By Mr. Brindley:

Q. 51. Have you on the list before you a statement of the customers to whom the W. H. McElwain Company sold its shoes for the period named in the State of Illinois?

A. I have a list for Illinois.

Q. 52. Into how many different towns in Illinois did the W. H. McElwain Company sell its shoes for the period mentioned?

A. Approximately thirty-six.

Q. 53. And the retail dealers of those towns were located in cities and towns ranging from Chicago to Herrin?

A. Yes, sir.

Q. 54. And such towns as Marion, Benton, Fana, Bloomington, Lincoln and Quincy?

A. Yes.

Q. 55. The shoes of the W. H. McElwain Company were sold pretty generally throughout the State of Illinois to retail dealers?

A. We sold to a number of retail dealers in Illinois; not a very large number of shoes, however.

Q. 56. But these dealers were scattered approximately all over the state, were they not?

A. I do not know the location of these towns in Illinois.

Q. 57. You know the location of Chicago?

A. I know the location of Chicago.

Q. 58. Have you an idea where Cairo, Illinois, is located?

A. Yes.

Q. 59. That extends fairly well across the state, doesn't it?

A. That extends across the state; yes.

Q. 60. Have you a list of the retail dealers to whom the W. H. McElwain Company sold shoes prior to May 31, 1921, in Tennessee?

A. I have.

Q. 61. And those retail dealers were located in what towns or cities of Tennessee?

A. Memphis, Murfreesboro, Lebanon, Nashville, Dyersburg, Fayetteville, Knoxville.

Q. 62. In what towns in Tennessee was the largest part of the shoes — by W. H. McElwain Company in the year preceding May 31, 1921?

A. Knoxville, Nashville and Memphis.

Q. 63. How about the town of Fayetteville, Tennessee?

[fol. 222] A. We had one customer there to whom we sold 192 dozen. That seems to be less than we sold in the towns I mentioned.

Q. 64. In how many cities or towns in Tennessee were the shoes sold to retailers for the year preceding May 31, 1921?

A. Eight towns and cities.

Q. 65. In how many towns and cities in South Carolina did the W. H. McElwain Company sell its shoes direct to retail dealers for the time mentioned?

A. Nineteen.

Q. 66. And in South Carolina it sold shoes to retail dealers in such towns as Rockhill, Chester, Orangeburg, Lamar and Greenwood, did it?

A. Yes, sir.

Q. 67. Into how many towns in the State of Georgia did the W. H. McElwain Company sell its shoes for the period named?

A. I make it twenty-nine. I may have missed some.

Q. 68. And shoes were sold in Georgia in the towns of Athens, Albany?

A. Yes.

Q. 69. Dawson?

A. Yes, sir.

Q. 70. Griffith?

A. Yes.

Q. 71. Winder?

A. Yes.

Q. 72. And Tifton?

A. Yes.

Q. 73. And those towns just named are not the largest cities in Georgia, are they?

A. No, they are not.

Q. 74. Referring to your list of retail dealers in the State of Florida, tell me the number of towns in Florida the W. H. McElwain Company sold its shoes in for the year ending May 31, 1921.

A. Four.

Q. 75. To how many different customers in Florida?

A. Ten.

Q. 76. Refer to your list of retail dealers for the State of Missouri and tell me into how many cities and towns in Missouri the W. H. McElwain Company sold shoes for the year ending May 31, 1921?

A. Sixteen.

Q. 77. Sixteen cities and towns in Missouri?

A. Yes, sir.

Q. 78. To how many customers were those shoes sold in the State of Missouri?

A. Forty-six.

Q. 79. Does the list before you show whether the W. H. [fol. 223] McElwain Company sold shoes to retail dealers in the State of Iowa and in the State of Oklahoma?

A. Yes.

Q. 80. You sold there?

A. Yes.

Q. 81. Refer to your list of retail dealers in the State of Texas and tell me how many different towns in the State of Texas the McElwain Company sold shoes to retail dealers for the year ending May 31, 1921?

A. Twenty-three.

Q. 82. To how many different retail dealers in Texas?

A. Thirty-nine.

Q. 83. And the shoes were sold for the period named in the State of Texas to retail dealers in cities of San Antonio, Texarkana, Wichita Falls, Dallas, Galveston, Laredo, and other towns?

A. Yes, sir.

Q. 84. Do the lists of retail dealers you have show that the W. H. McElwain Company sold its shoes for the period named to the retail dealers in California?

A. Yes.

Q. 85. And in Oregon?

A. Yes.

Q. 86. And in Washington?

A. Yes.

Q. 87. So the fact is that W. H. McElwain Company sold the shoes manufactured by it direct to retail dealers from the Atlantic to the Pacific and from the Great Lakes to the Gulf?

A. Yes, but not necessarily in all the states within those confines.

Q. 88. But in the states you mentioned a few moments ago?

A. Yes, that is true.

Q. 89. What kind of shoes were sold by W. H. McElwain Company for the year ending May 31, 1921, to retail dealers throughout the country?

A. Men's and boys' dress shoes.

Q. 90. What do you mean by dress shoes?

A. I mean as distinguished from work shoes.

Q. 91. One is suitable for average wear in the different walks of life and it is not called a work shoe?

A. Yes.

Q. 92. One that would be suitable for a lawyer to wear?

A. I think we made a good many shoes for lawyers.

Q. 93. And the shoes were suitable for dentists, physicians and surgeons to wear, were they?

A. Yes, sir.

Q. 94. In fact, were they shoes suitable for the average [fol. 224] business or professional man in the different walks of life?

A. We designed them especially for city men.

Q. 95. You do not answer my question. I did not ask you who you designed them for.

A. They were suitable for business and professional men.

Q. 96. Business and professional men throughout the country generally wore them?

A. Primarily for the city man.

Q. 97. A man in Athens, Georgia, whether he was lawyer, doctor or teacher in the university could wear them with proper propriety?

A. Yes.

Q. 98. And the man in Gadsden, Alabama, regardless of business or profession, could wear the McElwain Company's shoes with perfect propriety?

A. We thought so.

Q. 99. And also in Tuscaloosa, Alabama?

A. Yes, we thought so.

Q. 100. And that really extended from the Atlantic to the Pacific, didn't it?

A. Yes.

Q. 101. How many classes or sty-es of men's dress shoes did the McElwain Company make and sell prior to the time that its stock was acquired by International Shoe Company?

A. Several hundred.

Q. 102. Did it make several hundred different styles and kinds all during the period you were connected with it? I mean each year?

A. It broadened its line in men's and boys' shoes somewhat from the time I began with it until 1921, making more styles I mean to say in 1921 than in 1906.

Q. 103. Have you a catalogue of the W. H. McElwain Company's output during this period?

A. I have not.

Q. 104. Can you tell me where I can secure one?

A. I never knew the company to issue a catalogue.

Q. 105. Did it issue any circulars or descriptive matters, or illustrations, of the shoes which it made and sold?

A. Our branches, some of them at least, issued catalogues which contained our shoes and other shoes. So far as I know, we never issued a catalogue; a published catalogue or a printed catalogue I am speaking of.

[fol. 225] Q. 106. They issued no printed catalogue?

A. As far as I know.

Q. 107. Did the W. H. McElwain Company employ travelling saelsmen?

A. It did.

Q. 108. In what section of the country did these salesmen travel?

A. Those men covered the larger cities throughout the country.

Q. 109. At what price were the shoes manufactured by the W. H. McElwain Company sold by it to retail dealers in towns?

A. At what time?

Q. 110. For the year ending May 31, 1921?

A. I can speak only from memory.

Q. 111. That is what most of us have to speak from.

A. Our prices were advancing and had been advancing for the last seven years, and each season they were higher.

Q. 112. In your best judgment, what was the price they were sold for the year preceding May 31, 1921?

A. I should say that our men's shoes were sold to the retailer, our best grade, at about $9.

Q. 113. What do you mean by $9?

A. A pair; our lower grades probably from $6 up to $9 per pair.

Q. 114. In your judgment, then, the men's dress shoes were made and sold, at the time mentioned, to retail dealers at prices ranging from $6 to $9 per pair?

A. Yes.

Q. 115. How about the boys' shoes which the McElwain Company made and sold at the same period?

A. I cannot answer that question. I never followed the prices on our boys' shoes.

Q. 116. Of what kind of leather were those men's shoes you have just described manufactured?

A. Calf skin, side leather and kid skin and patent leather.

Q. 117. You are familiar with the acquisition of the capital stock of the W. H. McElwain Company by the International Shoe Company, I presume?

A. I am.

Q. 118. Do you recall when that acquisition occurred?

A. I do.

Q. 119. At and prior to the acquisition who were the officers of the W. H. McElwain Company?

A. President, J. F. McElwain. Vice-Presidents, Charles J. Prescott, W. L. Shaw, Stanley King. Treasurer, Edward L. Prescott. Directors, the above and S. M. Patter-
[fol. 226] son, Daniel P. Morse, Louis B. Jackson, Allen N. Bennett, A. G. Matless, Irving R. Fisher, K. L. Barton, James J. Storrow and Francis P. Murphy, and George Hutchinson.

Q. 120. At the time the International Shoe Company acquired the capital stock of the W. H. McElwain Company how many different kinds of stock did the McElwain Company have outstanding?

A. Three.

Q. 121. Describe them.

A. First preferred stock par value $100; second preferred stock par value $50; common stock par value $50.

Q. 122. Can you give the amount of outstanding stock, of each class?

A. I can. First preferred stock outstanding $6,998,100; second preferred stock outstanding $2,600,000; common stock outstanding $3,394,800.

By Examiner Bennett:

Q. 123. At par?

A. At par.

By Mr. Brindley:

Q. 124. What rate of dividend did the preferred stock of both classes of W. H. McElwain Company Carry?

A. First preferred stock was seven per cent cumulative; second preferred stock was six per cent cumulative and participating in addition from the earnings up to a maximum of nine per cent. The common stock as voted by the directors.

Q. 125. At the time the stock of the W. H. McElwain Company was acquired by the International Shoe Company had any default been made in the payment on dividends on preferred stock?

A. No default has been made in the payment of dividends on the first preferred stock. Default had been made in the payment of dividends on second preferred stock.

Q. 126. And who owned the second preferred?

A. The second preferred stock was owned by a large number of shareholders, most of whom were members of the McElwain organization or employees of McElwain Company; many of them employees at the bench and families of present or past employees of McElwain Company, with some shares held outside.

Q. 127. Who owned the common stock of the McElwain Company?

A. About two-thirds of the common stock was owned by [fol. 227] members of the McElwain organization and about one-third by outsiders having no connection with the McElwain Company.

Q. 128. The management of the McElwain Company owned then the larger part of the common stock and a large part at least, if not the larger part, of the second preferred stock?

A. The management and employees on the second preferred stock. The management on the common stock.

Q. 129. What class of stock in the McElwain Company carried the voting power?

A. The voting power was carried by the common, except that upon default in the payment of dividends on the first preferred stock the first preferred and second preferred stock both acquired voting power.

Q. 130. What change was made in the business personnel of the W. H. McElwain Company after the International Shoe Company acquired the stock of the McElwain Company?

A. No change was made in the officers or directors of the McElwain Company after the acquisition of control by the International Shoe Company until January 1922, when J. F. McElwain resigned as president and director of the McElwain Company, and at my suggestion his place was filled by the election of Mr. Frank C. Rand as president and director.

Q. 131. Who is Mr. Frank C. Rand?

A. President of the International Shoe Company. May I correct that statement further by saying that in June 1921, when we sold the Kansas City business to Mr. Barton, Mr. Barton resigned as a director of the McElwain Com-

pany and his place was not filled. In the fall of 1921, when we sold the Fisher business to the Fishers, Irving Fisher resigned as a director of McElwain and his place was not filled. On November 30, 1921, Mr. Daniel P. Morse resigned as a director and retired, and his place was not filled. Do you want me to go on beyond that in the changes of officers and directors?

Q. 132. Yes.

A. About April 1, 1922, Mr. Bennett resigned as a director and his place was not filled. In April 1922 Mr. Prescott resigned as a director, and his place was not filled. In May 1922 Mr. E. L. Prescott resigned as a director, and his place was not filled. In August 1922 Mr. Francis Mur-[fol. 228] phy resigned as a director, and his place was not filled. In September 1922 Mr. Patterson resigned as a director, and his place was not filled. In 1922 Mr. James J. Storrow, having served his term, requested that he be not re-elected. Mr. E. L. Prescott resigned as treasurer and I was elected treasurer to succeed him. In 1923, in May, Mr. Matless resigned as a director, and his place was not filled. At some time, the date of which I forget, Mr. Jackson either resigned or asked not to be re-elected, and his place was not filled.

Q. 133. Does that include all of the changes?

A. It includes all I think of at the time.

Q. 134. How many directors did you actually have then in the year 1923?

A. That includes all the changes up to 1923.

Q. 135. On the first of January 1923 did you have any directors at all?

A. Yes; we had Frank C. Rand, Stanley King, W. L. Shaw, George Hutchinson; Clifford P. Warren had been elected; that makes five. In last of May and early June 1923 all of those officers and directors resigned, after the filing of the complaint of the Federal Trade Commission.

Q. 136. When were their places filled?

A. Their places were filled about the last of June or the first week in June 1923.

Q. 137. Who succeeded Mr. Rand as president?

A. Clifford P. Warren.

Q. 138. Did you resign as vice-president?

A. I resigned as vice-president and treasurer.

Q. 139. What date?

A. The first week in June 1923.

Q. 140. Who succeeded you?

A. Edward L. Prescott succeeded me as vice-president, as I recall. C. S. Howland succeeded me as treasurer.

Q. 141. Where are the books and records of the W. H. McElwain Company?

A. Most of the books and records of the W. H. McElwain Company are located in Boston, in our office.

Q. 142. What do you mean by "our office"?

A. The International Shoe Company's office, where they have recently been subject to examination by the Federal income authorities, auditing our past returns.

[fol. 229] Q. 143. Does that include the stock book of the W. H. McElwain Company?

A. The stock book of the W. H. McElwain Company has always been with the Old Colony Trust Company as transfer agent, for all classes, up to the time I was last advised.

Q. 144. What was the date of the annual meeting of the stockholders of the W. H. McElwain Company?

A. The date of the annual meeting was formerly in June, subsequently in August; and then changed to January, when we changed our fiscal year.

Q. 145. When was it changed to January?

A. In 1921.

Q. 146. Were any by-laws adopted by the W. H. McElwain Company?

A. Yes.

Q. 147. Have you a copy of them with you?

A. Mr. Gray has here a copy of those provisions of the by-laws containing the preference and voting rights of the stock. I haven't a complete copy of the by-laws here.

Q. 148. Examine the document offered in evidence in this case as Respondent's Exhibit Number 16 and tell me if you recognize it or know what it is.

A. I recognize it as a copy of letter received by me.

Q. 149. Written by whom?

A. Mr. Rand.

Q. 150. What is the date of that letter?

A. May 18.

Q. 151. What year?

A. 1923.

Q. 152. And that refers to a telephone message from you to Mr. Rand?

A. Refers to a telephone message from Mr. Rand to me.

Q. 153. Did you receive a telephone message from Mr. Rand to you following the report that a complaint would be issued?

A. Yes, sir.

Q. 154. When did you report to Mr. Rand that the Federal Trade Commission intended to issue a complaint in this proceding?

A. In early May I sent Mr. Rand a clipping from a Washington news service saying that it was understood that the Federal Trade Commission was about to issue a complaint against a large shoe manufacturer. I sent that on to Mr. Rand and this letter was a reply to the clipping I sent him. [fol. 230] Q. 155. That news item did not mention the name of the company?

A. No.

Q. 156. You assumed it meant the International Shoe Company?

A. It had something further in it which seemed to identify the International Shoe Company but did not give the name.

Q. 157. What date was it then approximately that you sent that report to Mr. Rand?

A. Probably a week before this letter.

Q. 158. Do you know what date the complaint was issued in this case?

A. I would have to refer to my files—

Q. 159. The very date of that letter, to be exact?

A. The date of this letter?

Q. 160. May 18th.

A. That is it.

Q. 161. Following that letter to Mr. Rand did you go to Washington then?

A. I did.

Q. 162. Were you accompanied by anyone?

A. I was not. I went to Washington the following Monday after this letter.

Q. 163. When was your next visit to Washington in connection with this matter?

A. In late June or early July. I will have to look up my records.

Q. 164. Were you accompanied by anyone at that time?

A. I was accompanied by Mr. Blake.

Q. 165. Was it following that conference or that visit to Washington that you came then to St. Louis for a conference with the officers of the company?

A. No; it was following my first trip to Washington, when I went alone.

Q. 166. That you made this visit to St. Louis?

A. Yes, sir.

Q. 167. Were you in conference with Mr. Rand, Mr. Blake and perhaps other officers of the International Shoe Company?

A. I was.

Q. 168. And was it in that conference that the policy or plan to be carried through was decided upon?

A. A program of action was decided upon at that time; yes.

Q. 169. What was that program?

A. The program was to sell, or attempt to sell, the securities of the W. H. McElwain Company owned by the International Shoe Company.

[fol. 231] Q. 170. You mean by that the capital stock of the W. H. McElwain Company?

A. Yes.

Q. 171. Was that all there was to the program?

A. That is all there was at that time.

Q. 172. When did anything subsequent come in?

A. Pursuant to that program——

Q. 173. Do not run off on anything else. When did anything else subsequent to the policy or program to sell the stock come in?

A. When Mr. Blake and I found we could not sell it to the New York bankers we negotiated with on the terms we were interested in selling.

Q. 174. The first program was that the stock of the W. H. McElwain Company would be sold?

A. Yes, sir.

Q. 175. And that is all, is it?

A. That was one transaction.

Q. 176. Was that all the program?

A. No; that program included also a subsequent purchase of the assets.

Q. 177. Certainly. That is what I wanted to hear you say.

A. That is correct.

Q. 178. The program agreed upon here with the officers, or some of the officers, of the International Shoe Company, Mr. Blake and yourself, was that the capital stock of the W. H. McElwain Company owned by the International Shoe Company would be sold and the assets, properties and plants of the W. H. McElwain Company retained, wasn't it?

A. No, sir.

Q. 179. What was it then?

A. That the securities were first to be sold and we should then make an offer subsequently to purchase the assets.

Q. 180. Is that all there was to the program of agreement?

A. That is all I know about it.

Q. 181. Repeat that again, so that I get it exactly as to what that program agreed upon was.

A. That the McElwain stock was to first be sold; that subsequently we should make an offer for the purchase of the assets.

Q. 182. And you and Mr. Blake were authorized to carry that out?

A. We were.

Q. 183. What price then was placed on the stock of the [fol. 232] International Shoe Company's which you were to sell?

A. An exact price was not placed at that meeting.

Q. 184. So you were just given authority to go out on the market and sell the stock, were you?

A. To negotiate for the sale of the stock.

Q. 185. So then you were not authorized to sell it?

A. I could not say at that time whether I was authorized to sell or not. No price was fixed at that time.

Q. 186. No price fixed on the stock?

A. No.

Q. 187. No price fixed on the assets which the International Shoe Company was to purchase?

A. No.

Q. 188. That was after the complaint had been issued, wasn't it?

A. It was.

Q. 189. Then in pursuance of that program what did you do?

A. Called on George H. Burr of New York.

Q. 190. What did you accomplish?

A. Nothing.

Q. 191. What was your next step?

A. Mr. Blake's next step was to return to St. Louis. My next step was to return to Boston.

Q. 192. After you returned to Boston what did you do?

A. In Boston I was approached by Mr. Charles J. Prescott,

Q. 193. Who is Mr. Prescott?

A. He was formerly a vice-president of W. H. McElwain Company.

Q. 194. What were his connections with it at the time he approached you in Boston?

A. None.

Q. 195. What was his interest in the transaction?

A. He asked me if the International Shoe Company was interested in selling this McElwain stock. I told him I thought it was. He said he had some Canadian friends who he thought would be interested in buying. I asked him who they were. He said Bennett, Limited. I knew Bennett, Limited. I asked him how I could get in touch with an officer of Bennett, Limited, or an officer of Bennett, Limited, get in touch with me. He said he would take the matter up with Bennett, Limited, as one of their officers was then in Boston, and if they were interested they would get in touch with me. Shall I proceed?

Q. 196. Yes; what happened next?

A. Mr. Prescott telephoned Bennett, Limited, would be [fol. 233] interested in buying the stock at a satisfactory price and asked me if I could meet Mr. Bonin, vice-president of Bennett, Limited. I met Mr. Bonin.

Q. 197. What did he say to you?

A. He wanted to know if we were interested in selling the stock and I told him we were. We discussed the amount of stock and the price.

Q. 198. What price did you name to him?

A. I told him I thought we could sell it at approximately four million dollars.

Q. 199. What did he say to that offer or statement?

A. He said under proper conditions he thought he would be interested in buying it.

Q. 200. What else did you say to him?

A. We discussed the details, the number of shares, and the date when it could be put through. He said he would have to refer the matter to his Canadian lawyers, and I said I would have to refer the matter to Mr. Rand.

Q. 201. What date was this you had this conversation with Mr. Bonin?

A. I think my first conversation with him was June 10th,

Q. 202. Where did it occur?

A. Boston.

Q. 203. At what place?

A. At an apartment in Boston where Mr. Bonin was visiting.

Q. 204. Had you called to see him?

A. I called to see him.

Q. 205. He did not call to see you?

A. No.

Q. 206. Is that the first time you had ever seen Mr. Bonin?

A. No; I had seen him many times before that.

Q. 207. Where is he now?

A. I do not know.

Q. 208. Is he in existence?

A. I understand him to be.

Q. 209. Where is his home?

A. Chambley, Province of Quebec.

Q. 210. What next occurred with reference to the sale of this stock?

A. It was agreed that Mr. Bonin should refer the proposal to his directors in Montreal and to his lawyer in Montreal. It was agreed that I should refer the proposal to Mr. Rand.

Q. 211. What did you do?

A. Before I go any further, Mr. Bonin and I came to a tentative agreement, subject to approval on both sides, and subject to an exact determination of the price.

[fol. 234] Q. 212. After you reached that tentative agreement what did you do?

A. I came back and began working on figures.

Q. 213. Came back where?

A. At my own office and began working on the figures.

Q. 214. What next?

A. Mr. Blake arrived from St. Louis and I told Mr. Blake the proposition I had. Mr. Blake said Mr. Johnson and

Mr. Rand had decided on a different course of action; that they had decided that it was wise to make an offer direct to McElwain Company as at present constituted for its assets, and if the offer is accepted to purchase the assets and liquidate the company.

Q. 215. That was the first you had heard of the plan?

A. Yes, sir.

Q. 216. Up to that time then you had never heard of the proposition that the International Shoe Company wanted to retain the assets, plants and properties of the W. H. McElwain Company?

A. To answer that question, I knew they felt they had to retain them.

Q. 217. But you do not answer my question. When Mr. Blake arrived in Boston, after you and Mr. Bonin had reached a tentative agreement, that was the first time you heard or was advised that part of the plan included the retention of the assets by the International Shoe Company of the plants, assets and property?

A. I tried to answer that question earlier when I said in the conference in St. Louis, which I attended, the plan then discussed was a sale of the securities and a subsequent offer for the assets.

Q. 218. When did that occur then?

A. That was in a meeting in St. Louis which I testified I attended when I first came out from Washington.

Q. 219. What was that date?

A. About May 21st or 22d.

Q. 220. But subsequent to that time, when you went to Washington, your instructions were with reference to the sale of the stock only, were they?

A. I had gone to New York and attempted to sell the stock and failed; and then I went to Boston with no further instructions.

[fol. 235] Q. 221. What were your instructions when you left St. Louis?

A. To negotiate with Mr. Burr.

Q. 222. For what?

A. Sale of the McElwain stock.

Q. 223. Only?

A. And a subsequent offer for the assets.

Q. 224. So that when you did leave St. Louis you carried instructions to sell the stock and also purchase the assets, did you not?

A. I would not say that I carried instructions to either sell or purchase, but to negotiate a proposal.

Q. 225. You carried instructions to negotiate to do both, didn't you?

A. Yes, sir.

Q. 226. So when you left St. Louis the first time——

A. And the only time.

Q. 227. —you left then with instructions to negotiate a sale of the stock and a purchase of the assets and properties, didn't you?

A. And a subsequent offer for the assets.

Q. 228. A subsequent offer?

A. Yes.

Q. 229. It was all included in your instructions, wasn't it?

A. I received no written instructions; I received no verbal instructions other than as a result of discussion or conference. I never received any verbal or written instructions from the International Shoe Company.

Q. 230. You do not mean to tell me you went out on this proposition on your own authority and volition, do you?

A. On which proposition?

Q. 231. To negotiate the sale of the stock and buy the properties of the McElwain Company?

A. With Mr. Burr?

Q. 232. With anyone.

A. I went out on my own volition when I heard from the Bennett, Limited,—absolutely.

Q. 233. I am talking about the time when you left St. Louis.

A. No, I did not go out of my own volition then.

Q. 234. You went out under instructions, did you not, or carrying instructions as to what you should attempt to do?

A. I went out to carry out a plan which we discussed.

Q. 235. Which who had discussed?

A. Mr. Rand, Mr. Blake and myself.

Q. 236. What was that plan which you left St. Louis to carry out?

[fol. 236] A. A sale of the McElwain securities and a subsequent offer for the McElwain assets.

Q. 237. They both went together, didn't they, the sale of the stock and the purchase of the assets?

A. You mean in time?

Q. 238. That is what your instructions were, to sell the stock and to buy the assets?

A. To make an offer for the assets. That is where we differ.

Q. 239. You knew as well as anybody, as Mr. Rand testified, the plan was to get rid of the stock or have the International Shoe Company divest itself of the stock and yet retain the plants and properties and assets of the McElwain Company, didn't you?

A. I knew if I could sell the plants and assets of the McElwain Company for a fair value the International Shoe Company would approve the action and be delighted to have me effect it, and I tried to do so. I tried to sell the plants and assets twice.

Q. 240. You do not answer my question. Answer me this, definitely, if you can: When you left St. Louis after your visit here from Washington, did you not leave with instructions to attempt to sell the capital stock of the W. H. McElwain Company and retain or purchase for the International Shoe Company the plants, properties and assets of the McElwain Company?

A. I understood that I had full freedom to sell the plants, properties and assets, if I could.

Q. 241. But you have not answered my question. That is not what I am asking you. I asked you if you did not leave with instructions to do those two things?

A. I say no.

Q. 242. No?

A. Yes.

Q. 243. What were your instructions then?

A. I felt at complete liberty——

Q. 244. It don't make any difference about how you felt, Mr. King.

A. I had no definite instructions, colonel.

Q. 245. None at all?

A. Except to call on Mr. Burr.

Q. 246. Mr. Rand did not give you any?

A. No.

Q. 247. Or anyone else?

A. No.

Q. 248. Who instructed you to call on Mr. Burr?

A. Mr. Rand and Mr. Johnson both suggested I call on Mr. Burr.

[fol. 237] Q. 249. Who is Mr. Burr?

A. Mr. Burr is a New York banker.

Q. 250. And they suggested that you call to see Mr. Burr?

A. Yes, they O.K.ed my suggestion; I suggested Mr. Burr's name to them.

Q. 251. You first suggested his name?

A. I first suggested his name and they O. K.ed the suggestion.

Q. 252. Then you went to see him without any instructions whatever from the International Shoe Company, or its officers, did you?

A. Well, I should say I went to see him to try to work out some proposition and submit it back.

Q. 253. You did not know what that proposition would be?

A. I did not until I talked to him.

Q. 254. You did not know what the wishes of Mr. Rand or other officers of the International Shoe Company were?

A. I knew they would be willing for me to negotiate a proposition to sell McElwain outright and complete.

Q. 255. But you did not know what their wishes were, did you?

A. I think their wishes would have been for me to have done that if I could have done it.

Q. 256. Did you know what their wishes were?

A. No, I will not say I knew what their wishes were.

Q. 257. So you left St. Louis then after the conference with Mr. Rand and Mr. Blake and did not know what the wishes of Mr. Rand or the other officers of the International Shoe Company were?

A. I thought I knew but I will not swear I knew.

Q. 258. You do not know now; is that what you say?

A. I said I thought I knew, but I will not swear I knew.

Q. 259. How did you get that thing which you say you thought you knew; from whom did you derive that?

A. From out of a three-hour conference.

Q. 260. With whom?

A. Mr. Johnson, Mr. Rand and Mr. Blake and myself, with no instruction issued to me.

Q. 261. None whatever?

A. None whatever.

Q. 262. You were not instructed to sell the stock or attempt to sell it, were you?

A. I do not think I received any instructions, colonel.

[fol. 238] Q. 263. But were you instructed to sell the stock or attempt to sell it?

Mr. Blake: It seems that he has positively answered that question, Colonel Brindley.

Mr. Brindley: I think not, or I would not be insisting on it.

A. No, I was not.

Q. 264. How is that?

A. My suggestion that I attempt to sell the stock or attempt to sell the assets was approved.

Q. 265. Was that you suggestion to the conference here in St. Louis?

A. Yes, it was.

Q. 266. How did you happen to make that suggestion?

A. Because I spent twenty-four hours on the train coming out thinking what recommendations I would make to that conference.

Q. 267. And you decided on that plan, did you?

A. I decided to recommend to them to either sell the assets or sell the stock. I saw no way of selling the assets. It seemed to be an impractical suggestion, so I made the alternative suggestion of selling the stock.

Q. 268. That was the sole suggestion you made then, was it, to sell the stock?

A. No; I suggested both.

Q. 269. Weren't they coupled together?

A. Were they coupled together?

Q. 270. Yes.

A. I made one suggestion, and I said I didn't think it is possible to do that, and the other suggestion is to sell the securities.

Q. 271. The first suggestion, then, was to sell the assets?

A. Yes, sir.

Q. 272. And you mean by that the assets and properties of the W. H. McElwain Company?

A. Yes.

Q. 273. And you stated you did not think that could be done?

A. Yes.

Q. 274. So that your suggestion was to sell the stock?

A. Yes.

Q. 275. That was agreed upon, was it?

A. And I also suggested that we attempt to sell it to Mr. Burr; I made that suggestion.

Q. 276. So you left St. Louis without any definite instructions to do something, did you?

A. Yes.

[fol. 239] Q. 277. What was that something, now, that you left here and attempted to accomplish?

A. To carry out either one of my suggestions.

Q. 278. Either one?

A. Yes.

Q. 279. Which one did you submit to Mr. Burr?

A. I submitted to him the suggestion he buy the stock.

Q. 280. What did he say?

A. He first said it interested him, but after he talked with his lawyers he said it would not interest him except under conditions which he could not meet.

Q. 281. Did you tell him about the proceeding against you by the Federal Trade Commission?

A. Yes.

Q. 282. Then you went on to Boston?

A. Yes.

Q. 283. And it was then that you heard of a Canadian interest?

A. Yes; before I heard of the Canadian interest I attempted to sell the assets to one man in Boston, and while I was engaged in negotiating with the Canadian interests I tried to sell the assets to another man in Boston.

Q. 284. Who were the men in Boston to whom you tried to sell the stock.

A. One was George Lee of Lee, Higginson & Company, bankers, and the other one was Eben H. Ellison of Proctor, Ellison Company, tanners. I tried a third man.

Q. 285. Who was he?

A. Wendell Endicott, formerly of the Endicott-Johnson Company, since retired, and found he was in the Canadian woods on a fishing trip.

Q. 286. You then got in touch with the Canadian interests?

A. You asked me just before how I came out with these men, and might I answer that question before I take up this?

Q. 287. Yes.

A. I was unable to interest Lee, Higginson & Company in the purchase of the assets on any condition. Lee, Higginson & Company had been bankers of W. H. McElwain Company and knew the W. H. McElwain Company, and I submitted to them a balance sheet showing the present position of the company. I was unable to interest Mr. Ellison to make an offer for the assets. I submitted to him a balance sheet and discussed the items with him. He also had [fol. 240] been familiar with the McElwain Company for years and sold them large amounts of leather. I did get this tentative offer on the securities from Bennett.

Q. 288. From Bennett?

A. Yes.

Q. 289. What was that tentative offer?

A. Approximately four million dollars, detail figures to be worked out.

Q. 290. And that offer was for what?

A. For all of the first preferred stock owned by the International Shoe Company.

Q. 291. And what else?

A. For 491 shares of common stock owned by the International Shoe Company and 50 shares more if I could get them, and the understanding with Bennett was that all of the second preferred stock and all of the remaining common stock would be tendered by International Shoe Company to W. H. McElwain Company free on condition that the W. H. McElwain Company retire it and cancel it.

Q. 292. Where was that proposition made?

A. In the apartment in Boston where Mr. Bonin was stopping.

Q. 293. What date was that?

A. June 10th, 1923.

Q. 294. When you and M. Bonin reached that tentative proposition what was your next move?

A. My next move was made when Mr. Blake came to Boston, about two or three days later.

Q. 295. You did not communicate that offer then to anyone until Mr. Blake arrived?

A. I did not.

Q. 296. Didn't say anything to anybody about it?

A. Nobody in St. Louis about it.

Q. 297. Did you say anything to anybody in Boston?

A. I do not know whether I told Mr. Prescott Mr. Bonin and I had reached a tentative agreement.

Q. 298. Anyway, for three days you did not communicate with anyone in St. Louis?

A. No, I did not.

Q. 299. And then Mr. Blake arrived?

A. Yes, sir.

Q. 300. Then what did you and he do?

A. I told him how far I had got and he told me that Mr. Rand and Mr. Johnson had decided on a different plan.

Q. 301. Did he tell you what that plan was?

A. Yes, he told me what that plan was.

Q. 302. What was it?

[fol. 241] A. That plan was for the International Shoe Company to make an offer to McElwain Company for the assets and, if the offer was accepted, to acquire the assets and liquidate the McElwain Company.

Q. 303. Did he show you the offer?

A. I believe not.

Q. 304. When did you first see that offer?

A. I cannot testify as to that.

Q. 305. Did you ever see it?

A. Yes.

Q. 306. Do you remember where?

A. At my office.

Q. 307. How many offers from the International Shoe Company did you see?

A. I think I saw one offer in the alternative, or two offers, whichever way you want to consider it.

Q. 308. After you and Mr. Blake discussed the matter, and Mr. Blake had informed you of the plans of the officers of the International Shoe Company, what did you do?

A. I told Mr. Blake I thought it was wrong and I did not want to carry it out.

Q. 309. What else did you say?

—. I told him I was going to telephone Mr. Rand at once, which I did, and called Mr. Rand on the long distance.

Q. 310. What occurred between you and Mr. Rand?

A. I told Mr. Rand I had secured a tentative offer from Bennett on terms that seemed to be satisfactory for the sale of the McElwain securities.

Q. 311. Did you tell him how much that offer included?

A. In securities?

Q. 312. No; in money.

A. I think I told him approximately four million dollars, but the figures were being worked out by me.

Q. 313. You told Mr. Rand in the conversation over the phone you had an offer for the purchase of the stock?

A. Yes.

Q. 314. For approximately four million dollars?

A. Yes. I discussed it with Mr. Blake and Mr. Blake agreed with me. I said to Mr. Rand I thought when you have a doctor you ought to follow his advice.

Q. 315. Who was the doctor?

A. I feel I am the doctor in this case; I have worked this out, and I think it is the third to do. and I want you to do it.

[fol. 242] Q. 316. What did Mr. Rand say?

A. Mr. Rand asked me if Mr. Blake agreed with me, and I said he did.

Q. 317. Then what occurred?

A. Mr. Rand said: "Use your own judgment and go ahead."

Q. 318. And what did you do?

A. I then went to work with Mr. Blake to figure out the exact figure.

Q. 319. Did you figure it out?

A. We figured it out; yes.

Q. 320. What was the exact proposition you and Mr. Blake figured out?

A. $4,061,094.14.

Q. 321. For what?

A. For all of the first preferred shares of McElwain owned by the International Shoe Company, 491 shares of common and 50 shares more, if I acquired them, which I was trying then to acquire.

Q. 322. Having reached that conclusion, what did you do?

A. I then closed with Mr. Bonin.

Q. 323. He accepted your offer then, did he?

A. Yes, subject to the approval of his directors—formal approval by the directors; he had secured the approval of his associates by long distance telephone; subject to the formal approval of his directors and the directors of the International Shoe Company.

Q. 324. That was the proposition that you submitted to Mr. Bonin, was it?

A. That was the proposition that he and I together worked out; yes.

Q. 325. And that was the sole proposition, was it?

A. With Mr. Bonin?

Q. 326. Yes.

A. Yes.

Q. 327. There was not anything else said about any other transactions or any different ones?

A. I told Mr. Bonin that the International Shoe Company were contemplating making an offer for the assets.

Q. 328. But you did not tell him what that offer was?

A. No, I did not at that time.

Q. 329. And no offer was in existence, so far as you knew?

A. So far as I knew, he had not seen the offer at that time.

Q. 330. What did Mr. Bonin say to that information?

A. He accepted the information.

[fol. 243] Q. 331. And stopped on that?

A. Yes.

Q. 332. The whole deal, then, between you and Mr. Bonin was the purchase by the Bennett, Limited, of the stock you mentioned?

A. Yes.

Q. 333. It included the first preferred?

A. Yes.

Q. 334. And a portion of the common.

A. Yes.

Q. 335. And it was Mr. Bonin's suggestion that a majority of the common stock and all second and preferred be retired and cancelled?

A. No; I told him that the International would offer all of the remaining stock to the McElwain Company free on condition that McElwain retired and cancelled it.

Q. 336. So then that proposition did not come from Mr. Bonin?

A. No; that came from me.

Q. 337. His first proposition to you was that he would buy the stock only at the approximately four million dollars?

A. Yes.

Q. 338. And you finally worked it out by which you agreed on—give me those exact figures.

A. $4,061,094.14.

Q. 339. That was the exact amount, then, which you and Mr. Bennett agreed upon?

A. It was.

Q. 340. He was to submit that to his directors, of Bennett, Limited, was he?

A. Yes, sir.

Q. 341. And you were to submit it to the International Shoe Company?

A. Yes.

Q. 342. And there was no other understanding, contract or agreement except this between you and Mr. Bonin?

A. I think there should be coupled with that the understanding that the International would offer to McElwain Company all of the remaining common stock which it owned and all of the second preferred stock which it owned.

Q. 343. That for the purpose of being retired or cancelled?

A. Yes.

Q. 344. But there was no other property of any kind included in the agreement which you and Mr. Bonin reached?

A. No, there was not.

Q. 345. You then submitted the proposition to the International Shoe Company, did you?

A. I asked Mr. Blake to.

[fol. 244] Q. 346. Well, what did you do about it; did you get any subsequent instructions?

A. I heard it was approved.

Q. 347. When did you hear that?

A. That I do not know. I got a verbal authorization from Mr. Rand to proceed, and I proceeded without waiting for approval from the directors. I signed a contract on June 15th with Bonin.

Q. 348. Where did you sign that contract?

A. Signed it in Boston.

Q. 349. At what place?

A. I cannot remember what place.

Q. 350. That contract was not executed on June 15th, was it?

A. The contract will show what date it was executed on.

Q. 351. Do you know whether it was executed on the fifteenth day of June 1923?

A. May I refresh my recollection?

Q. 352. If you can. I am willing for you to refresh your recollection in any way.

A. To the best of my recollection, the contract was signed on June 15th.

Q. 353. Why was it that it was dated as of June 15th?

A. I don't know.

Q. 354. Wasn't that because it was not actually signed and executed on that date?

A. I still say that to the best of my recollection it was signed on the 15th. The shares were transferred on the 15th.

Q. 355. Doesn't that contract recite that it is executed as of the 15th of June, because it was not executed on that date?

A. May I look at the contract?

Q. 356. Certainly.

A. That contract was drawn by Canadian lawyers for Bennett, Limited, acting under instructions from Mr. Bonin over the long distance telephone, and to the best of my recollection was signed by me on June 15th, 1923.

Q. 357. When was it signed by Mr. Bonin?

A. To the best of my recollection, it was signed by Mr. Bonin when I signed it.

Q. 358. At the same place?

A. I cannot swear to that, but I think so.

Q. 359. Did you see Mr. Bonin sign it?

A. I do not know.

Q. 360. You do not remember that?

A. No.

Q. 361. Did he see you sign it?

A. I believe he did.

[fol. 245] Q. 362. Where did that occur?

A. In Boston.

Q. 363. At what place?

A. I do not know.

Q. 364. You say that contract now was drawn by a Canadian lawyer?

A. It was—that is my understanding.

Q. 365. In Canada?

A. In Canada, I believe. I think in Canada.

Q. 366. You signed that contract then without waiting to hear from the International Shoe Company as to whether that contract was satisfactory to them or not?

A. Oh, yes.

Q. 367. You went ahead and signed the contract there, agreeing to sell?

A. 69,946 shares of first preferred stock, 491 shares of common.

Q. 368. At what price?

A. $4,061,094.14.

Q. 369. And that is the only agreement that was made between you and Mr. Bonin, or any other person, regarding the capital stock and the assets of the W. H. McElwain Company?

A. The only agreement with the exception of the agreement I have already testified to, that the International Shoe Company would offer to McElwain Company all of the second preferred stock and all of the remaining common stock which it owned, for cancellation and retirement.

Q. 370. Isn't that included in the agreement?

A. No, that is not.

Q. 371. Just agreement for that amount of stock and nothing else?

A. Yes.

Q. 372. So that agreement for the return and cancellation of the other stock was an outside agreement and independent of that one?

A. Yes.

Q. 373. Was that agreement in regard to the other stock in writing?

A. It was not.

Q. 374. It was merely a verbal agreement between you and Mr. Bonin?

A. It was.

Q. 375. And that agreement was solely that——

A. There was one other agreement outside of this and not in writing which I have already testified to.

Q. 376. What is the other agreement?

A. If I acquired fifty shares more of common stock I was [fol. 246] negotiating for, it would go with this stock.

Q. 377. Where were those other fifty shares of stock?

A. They were held by Edward Wigglesworth of Boston.

Q. 378. Did he own the fifty shares?

A. He owned the fifty shares.

Q. 379. Was he the only other stockholder in the McElwain Company outside of the International Shoe Company interest?

A. No, there were about a half a dozen stockholders of the first preferred stock, owning a total of about thirty-five shares. Mr. Wigglesworth's stock was in the hands of his lawyers, but I was in negotiations with them, and from whom I expected to be served with a bill in equity.

Q. 380. Getting away from the outside stock and back to this: the contract there was the only agreement between you and Mr. Bonin, was it?

A. The only written agreement and the only agreement except those two verbal understandings which I have testified to.

Q. 381. They were merely understandings; there was no agreement of any kind, express or implied, between you and Mr. Bonin as to the assets and properties of the McElwain Company, was there?

A. There was no agreement between me and Mr. Bonin, express or implied, direct or indirect, in regard to the assets of the W. H. McElwain Company.

Q. 382. And the sole agreement was what was expressed in the contract with the understandings you have mentioned in addition to the offer and the acceptance?

A. Yes.

Q. 383. So you entered into what you considered a binding agreement with Mr. Bonin to sell the control of the stock?

A. Yes, I did.

Q. 384. For the sum you mentioned, $4,061,094.14?

A. Yes.

Q. 385. You were familiar with the situation of McElwain Company at that time, were you not?

A. I was very familiar.

Q. 386. You were vice-president and treasurer?

A. I had resigned about two weeks before that.

Q. 387. Had any successor to you been elected?

A. Yes.

[fol. 247] Q. 388. How much did the McElwain Company owe the International Shoe Company at the time you made that contract with Mr. Bonin?

A. Something like eleven million dollars.

Q. 389. And you knew that?

A. I knew that; yes.

Q. 390. And knew it at the time you executed that contract?

A. Yes.

Q. 391. And you were representing the International Shoe Company?

A. Yes.

Q. 392. So you made a binding contract to sell the control of that company, practically all of its stock, for the sum of a little more than four million dollars, and you knew the company owed your employer more than eleven million dollars?

A. Yes, that is right.

Q. 393. How do you explain that?

A. I felt perfectly secure about the eleven million dollars.

Q. 394. Why?

A. Because I knew that the assets of the McElwain Company were some fourteen million dollars.

Q. 395. Considerably more than its liabilities?

A. Considerably more than its liabilities, not counting its capital liability; considerably more than its current liabilities. I knew the assets were there and that the eleven million dollars was a claim on them.

Q. 396. How much did you say that the assets of the McElwain Company exceeded its liabilities?

A. I said approximately three million.

Q. 397. Approximately three million?

A. Yes.

Q. 398. And that does not include its capital liability you said?

A. The assets of the McElwain Company, the physical assets of the McElwain Company, exceeded all liabilities except capital liabilities by approximately three million dollars, or a little more.

Q. 399. So you sold all of the capital liability and arranged for its disposal for the sum of a little more than four million dollars?

A. Yes.

Q. 400. Did you consider the capital liability worth more than four million dollars at that time?

A. I thought that was a good price for it.

[fol. 248] Q. 401. From whose standpoint?

A. From the International Shoe Company's.

Q. 402. It was not a very good price from the standpoint of Mr. Bonin and his client?

A. I was not representing them.

Q. 403. You were not interested in their welfare?

A. They were quite competent to look out for themselves.

Q. 404. The best of your recollection then is the contract was executed on June 15, 1923?

A. Yes, sir.

Q. 405. After you executed the contract what was your next step?

A. To transfer all of the McElwain stock covered by the contract to Bennett, Limited, and a few days later I transferred fifty shares of common which I acquired from Mr. Wigglesworth to Bennett, Limited.

Q. 406. How did you acquire that, from the gentleman you named?

A. I acquired it by purchase from his lawyer.

Q. 407. How much did you give for it?

A. I gave $1,975.

Q. 408. For how many shares?

A. Fifty shares of common stock.

Q. 409. What was the face value of that stock?

A. Par value $2,500.

Q. 410. Where did you get the money to pay him for it?

A. Where did I get the money?

Q. 411. Yes.

A. I asked our cashier for a check.

Q. 412. Whose money paid for it then?

A. International Shoe Company's.

Q. 413. You got the money then out of the office of the International Shoe Company there in Boston?

A. Yes; the check was drawn on the International Shoe Company account.

Q. 414. What was the next step after transferring the stock?

A. Coincident with that step I delivered all of the second preferred stock and all of the remaining common stock of McElwain Company owned by International Shoe Company to the Old Colony Trust Company, transfer agents, with instructions that it was offered to W. H. McElwain Company provided W. H. McElwain Company voted to cancel and retire it, and they were to hold it subject to those instructions.

[fol. 249] Q. 415. What date was that?

A. The 15th of June.

Q. 416. The same date the contract was signed by Bonin?

A. Yes; and the shares were delivered—delivered to the transfer agent for transfer.

Examiner Bennett: I think at this point we will adjourn until tomorrow morning at 9.30 o'clock.

[Thereupon, at 5.30 o'clock p. m. on May 29, 1924, an adjournment was had until 9.30 o'clock a. m. May 30, 1924.]

St. Louis, Mo., May 30, 1924—9.30 o'clock a. m.

[Met pursuant to adjournment.]

The Witness I have a correction or two I wish to make.

Examiner Bennett: Very well.

The Witness: I cannot remember exactly what I testified yesterday, but in response to a question from Colonel Brindley as to whether I discussed the sale to Bennett with anyone in Boston I think I answered "no"; whether I discussed it with anybody in St. Louis I think I answered "no," except my telephone to Mr. Rand. My testimony in regard to St. Louis was correct. In Boston I think I mentioned the sale to several people. I certainly discussed it with Mr. Blake, the attorney. I mentioned it to Mr. Warren, who was president of McElwain Company at that time, and Mr. E. L. Prescott, who was one of the new directors of the McElwain Company at the time; and I do not remember whether I mentioned it to any of the other new direcors or not. I also mentioned it to Lee, Higginson & Company. I may have mentioned it casually to others who

came into the office to see me. I do not regard it as discussing it with them, except with Mr. Blake.

The other point I would like to clarify: Colonel Brindley asked me yesterday, as I recall, when I first saw the offer of the International Shoe Company to purchase the assets of the McElwain Company, and I testified I did not know, and I do not know. I can place it only in this way: I saw it on or before June 11, 1923, but I cannot place it any more accurately, but I tried to do so. It was on or before June 11, 1923.

[fol. 250] By Mr. Brindley:

Q. 417. Any other correction in your testimony of yesterday that you desire to make?

A. No.

Q. 418. The two offers of the International Shoe Company, or the offer in the alternative, whichever way you describe it, to purchase the assets and property of the McElwain Company was seen by you before the stock of the McElwain Company was sold to Bennett, Limited?

A. Before the contract was signed and the stock delivered; yes, sir.

Q. 419. According to the best of your recollection you saw these offers about June 11th, as you have just stated?

A. Yes, those offers; that is true.

Q. 420. And the contract with the Bennett, Limited, for the sale of the McElwain stock to Bennett, Limited, was signed June 15?

A. It was signed June 15th.

Q. 421. You saw those two offers then in the City of Boston?

A. Yes, sir.

Q. 422. When made by the International Shoe Company they were transmitted to the McElwain Company at Boston, were they?

A. I believe not; I believe they were transmitted to Mr. Blake, who was then in Boston.

Q. 423. And Mr. Blake is the one, according to the best of your recollection, who showed them to you?

A. Yes.

Q. 424. You saw them about four days before the contract for the sale of the McElwain stock to Bennett, Limited, was signed?

A. Yes.

Q. 425. Who was the representative of the Bennett, Limited, who was with you in Boston in connection with these negotiations?

A. Pierre Bonin.

Q. 426. And he was also advised of these offers of the International Shoe Company to purchase the assets of the McElwain Company, was he not?

A. Yes, he was advised that offers were contemplated. I do not know that he was advised that offers were received by Mr. Blake.

Q. 427. He knew what offers the International Shoe Company would submit?

A. That I do not know.

Q. 428. How long was Mr. Bonin in Boston during the [fol. 251] negotiations for the sale of the McElwain stock?

A. I first saw Mr. Bonin about June 8th. I do not know how long he was in Boston before that. I saw him again on June 10th. I saw him again on June 15th, when I signed the contract.

Q. 429. Do you recall any other meetings with him?

A. Yes; I saw him again on June 20th and I saw him again on June 21st.

Q. 430. I am not particularly interested at this time in the meetings of June 20th and 21st, but, from the time you first saw him on June 8th until the contract was signed on June 15th, how many times did you see him?

A. I do not recall seeing him on any other dates than June 8, 10, 15, but I may have seen him in those intervals.

Q. 431. Where was your office at that time?

A. 590 Atlantic Avenue.

Q. 432. Is that the office of the McElwain Company?

A. That was the office of the McElwain Company.

Q. 433. At that time?

A. Yes.

Q. 434. And you had resigned from the directorate of the McElwain Company?

A. I had.

Q. 435. And were no longer connected with it?

A. No longer an officer or director.

Q. 436. What was your connection with it?

A. I still had a desk there.

Q. 437. A desk?

A. Yes.

Q. 438. Were they paying your salary?

A. My salary was paid by the month and my check for the month of June was paid by the International Shoe Company and was received at the end of the month.

Q. 439. From the International Shoe Company?

A. From the International Shoe Company.

Q. 440. Had they paid your salary prior to June 1923?

A. No, they had not. Let me qualify that by saying that prior to June 1, 1923, my salary had been paid by the International check, which was charged to the McElwain Company and paid by the McElwain Company.

Q. 441. There was not any change in the method of pay-
[fol. 252] ing your salary then?

A. No change in the method of paying it, as far as I was concerned.

Q. 442. Simply paid by the check of the International Shoe Company?

A. Change in so far as——

Q. 443. The method of bookkeeping was concerned?

A. The source of the funds was concerned.

Q. 444. But it has always been paid by the International Shoe Company since it acquired the stock of the McElwain Company?

A. No; that is not true.

Q. 445. How long had it been paying it?

A. I cannot say that; two or three months.

Q. 446. Did Mr. Bonin call at your office while the negotiations for the sale of the McElwain stock were in progress?

A. Yes.

Q. 447. How many times?

A. I don't know whether more than once or not.

Q. 448. Did he investigate the business of the W. H. McElwain Company, whose stock he was about to purchase?

A. Yes.

Q. 449. What investigation did he make?

A. That I cannot tell you except that I submitted to him balance sheets and auditor's reports of the company, in detail, showing analysis of assets. What further investigation I do not know. I know that he did make further inquiries, though.

Q. 450. But you submitted to him detailed information regarding the condition of the company?

A. Yes, I did.

Q. 451. And of its business?

A. I did.

Q. 452. Did you tell him how much the W. H. McElwain Company owed in valid debts?

A. I gave him the latest figures I had; yes.

Q. 453. Have you copies of those balance sheets or statements which you gave to him?

A. I have not.

Q. 454. How much did the McElwain Company actually owe at the time these negotiations were in progress?

A. Approximately twelve million dollars.

Q. 455. Can you give me the exact figure?

A. Not from memory; no.

[fol 253] Q. 456. But it was approximately twelve million?

A. Twelve million dollars, approximately.

Q. 457. What were its net assets at that time?

A. Approximately two million and a half.

Q. 458. What were its gross assets at that time?

A. Approximately fourteen million and a half.

Q. 459. And you advised Mr. Bonin of these facts?

A. I did.

Q. 460. And he was well aware of them?

A. He was.

Q. 461. At the time the negotiations for the purchase of the stock were in progress and at the time the contract for the purchase was signed on June 15th, Mr. Bonin was aware of the fact that the W. H. McElwain Company owed approximately twelve million dollars?

A. Yes.

Q. 462. And was also aware of the fact that the net assets of the company amounted to approximately two and a half million dollars?

A. Yes.

Q. 463. And with that information in his possession he signed with you a contract for the purchase of the stock on his part, or the part of Bennett, Limited, for the sum of $4,061,094.14?

A. He did.

Q. 464. He signed that contract, then, knowing that the W. H. McElwain Company did not have sufficient assets to pay its debts and its stock, or the amount which was given for the stock?

A. He did.

Q. 465. You stated yesterday, I believe, that the stock book of the W. H. McElwain Company was in the possession of Lee, Higginson & Company?

A. No.

Q. 466. What did you state about that? Lee, Higginson & Company had some official connection with the company as representative of the stockholders, didn't it?

A. Lee, Higginson & Company were the bankers who sold and who marketed the first preferred issue of W. H. McElwain Company.

Q. 467. Weren't they the transfer agents of the stock?

A. No; the transfer agents were the Old Colony Trust Company of Boston.

[fol. 254] Q. 468. Was that the place where you had the stock transferred?

A. Yes, it is.

Q. 469. And that was done on June 15th?

A. It was turned over to them for transfer on June 15th.

Q. 470. Who turned it over?

A. I did.

Q. 471. Did you have all of the certificates of stock in your possession?

A. When I turned them over.

Q. 472. Prior to the turning of them over, when you signed the contract with Bennett, Limited?

A. I had them subject to my order in the safe deposit box in Boston.

Q. 473. In a safe deposit box, did you say?

A. In a safe deposit vault in Boston.

Q. 474. With the Old Colony Trust Company?

A. No; with the National Shawmut Bank.

Q. 475. Did you get the certificates out of there and present them to the Old Colony Trust Company?

A. I did.

Q. 476. And that was on June 15th also?

A. June 15th.

Q. 477. How many shares of stock did you transfer to the Old Colony Trust Company for transfer?

A. I presented to the Old Colony Trust Company for transfer to Bennett, Limited, certificates for 69,946 shares of the first preferred stock of W. H. McElwain Company, and certificates for 491 shares of common stock of W. H. McElwain Company. Also I presented to the Old Colony Trust Company certificates for 52,000 shares of second preferred stock of W. H. McElwain Company, and certificates for all of the remaining common stock owned by the International Shoe Company, the exact amount of which I can check up from my figures, with instructions they were to hold those for cancellation and retirement upon appropriate vote of the stockholders of the W. H. McElwain Company.

Q. 478. You mean the last two batches of stock you mentioned?

A. The last two. The first were turned over endorsed in blank with revenue tax and signatures guranteed, or satisfactory to the transfer agent,—endorsed for transfer to the Bennett, Limited.

Q. 479. The amount of stock that you turned over for transfer to Bennett, Limited, was the exact amount and classes of stock mentioned in the agreement with Bennett, Limited?

A. It was.

[fol. 255] Q. 480. And the other stock you have mentioned was the amount which was to be surrendered to the W. H. McElwain Company for cancellation?

A. It was.

Q. 481. When was the stock which was to be cancelled retired by the W. H. McElwain Company?

A. The stockholders of W. H. McElwain Company voted to cancel and retire the stock on June 20th.

Q. 482. The shares of stock which were to be cancelled and retired were held then by the Old Colony Trust Company from June 15th until June 20th, when cancelled?

A. Yes.

Q. 483. Who was with you when you delivered the stock you have described to the Old Colony Trust Company?

A. Nobody was with me unless possibly Mr. Bonin, and I cannot state whether he was with me or not.

Q. 484. To what officer or what agent of the Old Colony Trust Company did you deliver the stock?

A. Mr. Shaw, the president.

Q. 485. Were there any other officers or representatives of the Old Colony Trust Company present?

A. I think so.

Q. 486. Do you recall their names?

A. I do not. I recall the names of several, one of whom was present, but I cannot tell which one; there are several assistants Mr. Shaw has, all of whom I know.

Q. 487. Were they present?

A. My recollection is that one was present, but I do not know which one; they were all in an open office.

Q. 488. After you delivered the stock you have described to the Old Colony Trust Company, what was your next step in the transactions?

A. I received a check from Bennett, Limited.

Q. 489. When?

A. Either June 15th or June 17th, I do not now remember which.

Q. 490. What was the amount of that check?

A. $4,061,094.14.

Q. 491. What did you do with that check?

A. I held it.

Q. 492. On what bank was it drawn?

A. National Bank of Commerce, New York.

Q. 493. In whose favor was it drawn?

A. International Shoe Company.

[fol. 256] Q. 494. And it was signed by whom?

A. I am not sure whether it was signed by Mr. Bonin or not. My recollection is it was but my recollection is not clear.

Q. 495. You do not know whether it was the individual check of Mr. Bonin or the check of the Bennett, Limited?

A. It was the check of the Bennett, Limited.

Q. 496. Was it the check of the Bennett, Limited?

A. Yes.

Q. 497. And drawn on the——

A. National Bank of Commerce of New York.

Q. 498. How long did you hold that check?

A. Until June 21st.

Q. 499. What did you do with it then?

A. I deposited it.

Q. 500. Where?

A. In the National Bank of Commerce of New York.

Q. 501. In what fund?

A. The account of the International Shoe Company.

Q. 502. Did you make any other deposits in that bank at the same time?

A. On the same morning I delivered to the National Bank of Commerce in New York the note of the International Shoe Company in the amount of $4,000,000, with the request that it be discounted and the proceeds placed to the account of the International Shoe Company.

Q. 503. Is that the note described yesterday by the treasurer of the International Shoe Company?

A. It is.

Q. 504. What did you do after depositing that note with the National Bank of Commerce?

A. I think I did some other business in New York.

Q. 505. Was that business in reference to this transaction?

A. No.

Q. 506. I do not care anything about any business that had no connection with it.

A. I thought so.

Q. 507. During the forenoon you say you deposited the note of the International Shoe Company with the National Bank of Commerce and asked that the proceeds be placed to the credit of the International Shoe Company?

A. Yes.

Q. 508. And that was done?

A. I assume it was done; yes.

Q. 509. What was your next step in reference to the [fol. 257] transaction we are inquiring about?

A. I have skipped over certain steps because you followed me on that check in your questions from the time I received it—what I did with it. Between June 15th and June 20th I had some negotiations with that outstanding common stockholder Edward Wigglesworth, who I referred

to in my testimony yesterday, my negotiations being with his lawyer.

Q. 510. And in reference to what?

A. Mr. Wigglesworth's lawyer was discussing with me the filing of a bill in equity.

Q. 511. For what purpose?

A. For an accounting as a stockholder of W. H. McElwain Company.

Q. 512. You settled that by simply buying out this man you have mentioned?

A. Ultimately settled it that way.

Q. 513. What date did you settle that proposition by buying out that stockholder?

A. About June 23d. I will testify exactly on that date in a moment; June 28th it was finally settled.

Q. 514. That was the date you gave him a check for the amount of the purchase price of the stock?

A. Yes.

Q. 515. What was your next step in these transactions after you deposited with the National Bank of Commerce the $4,000,000 note?

A. Before that deposit there is one more step I can state if you wish me to.

Q. 516. Let us have that.

A. I attended as an outsider—I was present—at a stockholders' meeting of the W. H. McElwain Company on June 20th, but I took no part in the meeting.

Q. 517. What was that stockholders' meeting for?

A. As I recall, there were two questions for the stockholders.

Q. 518. What were those two questions?

A. One was whether or not the stockholders would vote to cancel, retire and extinguish 1,419 shares of first preferred stock which had been in the treasury of the company, 2,000 shares of second preferred stock which had been in the treasury of the company, 52,000 shares of second preferred stock which had been tendered to the company in accordance with my previous testimony, 104 shares of common stock which had been in the treasury of the company, and 69,346 shares of common stock which had been tendered to the company for cancellation in accordance with my previous testimony.

[fol. 258] Q. 519. That is the first proposition that was submitted?

A. Yes.

Q. 520. What was the second proposition?

A. To consider and act on the alternative offer of the International Shoe Company for the assets of the McElwain Company.

Q. 521. What were the two offers? Just tell me briefly.

A. The gross offer was to pay $16,537,821.91 for all of the properties and assets of W. H. McElwain Company, with an alternative offer to pay in cash $4,063,125.89 for all of the property and assets of the McElwain Company, the International Shoe Company to assume all of the liabilities.

Q. 522. Those two offers were written offers made by the International Shoe Company under date of June 4th?

A. Apparently; yes.

Q. 523. What action did the stockholders take?

A. As I recall, the stockholders voted to cancel and retire the stock held in the treasury and the stock which was offered for cancellation and retirement; on the sale of the assets the stockholders voted to accept the net offer of the International Shoe Company.

Q. 524. On what date was that action taken?

A. June 20th.

Q. 525. At what place?

A. 590 Atlantic Avenue.

Q. 526. In Boston, Massachusetts?

[A. Yes.]

Q. 527. Who was present at that meeting besides you?

A. Mr. Bonin, who represented Bennett, Limited; Mr. C. P. Warren, president of W. H. McElwain Company; Mr. E. L. Prescott, who was a director of the W. H. McElwain Company; Mr. C. J. Prescott, also I believe a director of the W. H. McElwain Company; C. S. Howland, who I believe was clerk of the company; and I think Mr. F. B. Smith, who was a director of the W. H. McElwain Company; Mr. Blake.

Q. 528. Which Mr. Blake?

A. Attorney for the International Shoe Company. There may have been others but I do not recall. Those are all that I recall.

Q. 529. What other action did the stockholders of the McElwain Company take on that date in reference to the transactions we are inquiring about?

A. I believe they passed some vote authorizing the direc- [fol. 259] tors and officers to carry out and do all necessary things to carry out the two principal votes.

Q. 530. Who were the officers of the W. H. McElwain Company at that time?

A. C. P. Warren was president; C. S. Howland was clerk; and I am not sure whether treasurer or not. The directors, so far as I recall, were C. P. Warren, Charles J. Prescott, Edward L. Prescott, F. B. Smith, and I think J. M. Nash and C. S. Howland; I think that is the list.

Q. 531. Where was your stockholder that was threatening to file a bill in equity?

A. He did not come to the meeting.

Q. 532. Did he have notice of it?

A. Yes, he had notice. I expected to see him there. That was the real reason I was there—to meet his lawyer.

Q. 533. This was a special meeting of the stockholders?

A. Yes.

Q. 534. And notice was given to all of the stockholders of the special meeting?

A. Yes.

Q. 535. Who prepared that notice?

A. I think C. P. Warren.

Q. 536. He is the president of the W. H. McElwain Company?

A. Yes; he was at that time.

Q. 537. It was on that date that the stockholders voted to accept the offer of the International Shoe Company calling for the sale of all of its assets to the International Shoe Company?

A. Yes.

Q. 538. And at that time the W. H. McElwain Company owed how much money to creditors?

A. About approximately $12,000,000.

Q. 539. How did you get around the bulk sales law in that move?

A. The matter was taken up with the principal creditors of the company, outside of the International Shoe Company, and explained to them and waivers secured.

Q. 540. How many creditors were there of the McElwain Company in addition to the International Shoe Company?

A. That I do not know.

Q. 541. Were there any?

A. Yes.

Q. 542. Approximately how many?

A. I cannot testify as to that. They were all for current bills; telephone, stationery, telegrams, and all the small things of that sort. The larger accounts for machinery—[fol. 260] current items for machinery and purchases of leather and cloth and other merchandise items.

Q. 543. Can you give the names of any of those creditors?

A. I can give the names of a number of them; yes.

Q. 544. Give me the names of the larger creditors except the International Shoe Company from whom waivers were secured.

The Witness: Mr. Blake, have you the waivers here?

Mr. Blake: Yes.

A. May I testify from the waivers?

Q. 545. If you know and have the originals.

A. United Shoe Machinery Company; Lawrence & Company; Ashland Leather Company; United States Leather Company; Armour Leather Company; Proctor, Ellison Company; United States Rubber Company; Howes Brothers Company; American Hide & Leather Company; Boston Woven Hose & Rubber Company; Beckwith Manufacturing Company; Winslow Brothers & Smith Company.

Q. 546. Who secured those waivers?

A. Those were in general secured by the purchasing agent who did business with the respective companies.

Q. 547. Purchasing agent of what company?

A. The McElwain Company.

Q. 548. When were they secured?

A. In most cases in the two or three days preceding the meeting; in the case of Winslow Brothers & Smith on June 23d. In the case of the Boston Woven Hose & Rubber Company on June 22d, although I had a telephone from them June 21st they would execute it.

Q. 549. Let me see those waivers.

[Witness hands counsel documents.]

Q. 550. These waivers are all in identically the same language, are they not?

A. Most of them. I do not know that all of them are.

Q. 551. All addressed to the International Shoe Company at St. Louis, Missouri?

A. Yes.

Q. 552. And none of them bear any date?

A. Some of them bear date.

Q. 553. I see that of the United States Rubber Company is dated June 21st and that of Howes Brothers Company dated June 20th; American Hide & Leather Company dated June 21st; Boston Woven Hose & Rubber Company [fol. 261] dated June 22d, and the Beckwith Manufacturing Company dated June 21st, and Winslow Brothers & Smith Company dated June 23d. All of the others I believe then are not dated?

A. The others are not dated.

Q. 554. When was the first waiver secured?

A. I cannot testify as to that.

Q. 555. Was it prior to the special meeting of the stockholders?

A. It was.

Q. 556. How many waivers were secured prior to the meeting of the stockholders on June 20th?

A. I cannot testify to that; I do not know.

Q. 557. Were there several or more than one?

A. Yes, several came in before the meeting.

Q. 558. And that is the several of these waivers which are not dated, I assume?

A. Yes.

Q. 559. Examine the waivers you have just referred to and tell me if all of them are in identically the same language except bearing different signatures?

A. They seem to be all in the same language except the signatures.

Q. 560. Select one of these waivers, signed by the W. H. McElwain Company, that was received prior to the special stockholders' meeting of June 20th?

A. I cannot say that.

Q. 561. But you do know that several came in?

A. Yes, I do; but I cannot testify as to which ones.

Q. 562. Select one of these waivers and read it in full to the reporter so it will go into the record.

A. "International Shoe Company, St. Louis, Mo. Gentlemen: In accordance with request from W. H. McElwain Company of Boston, we are hereby waiving notice of the proposed sale of all of its properties to you or any other formalities that may be required by the several Bulk Sales Laws of the States of Massachusetts, New Hampshire, Vermont, New York, Ohio, Illinois, California and Missouri and of the Republic of Argentina; and hereby consent to the sale by W. H. McElwain Company of all of its proper- [fol. 262] ties to you. Yours very truly, United Shoe Machinery Company, E. L. Hurd, Treasurer."

Q. 563. So these creditors knew prior to the special stockholders' meeting of June 20th that all of the properties of the W. H. McElwain Company would be sold to the International Shoe Company, did they?

A. They knew that a proposition was contemplated.

Q. 564. And, therefore, they executed the waiver which you have just read? A. That is true.

Q. 565. And some of them executed that waiver prior to June 20th?

A. Yes.

Q. 566. Did the stockholders at this special meeting of June 20th take any action in regard to deeds, bills of sale or transfers to the International Shoe Company?

A. To the best of my recollection they passed a vote authorizing the officers and directors to take the necessary steps.

Q. 567. And did they take the necessary steps?

A. They took steps—what I suppose were appropriate steps.

Q. 568. It was on June 20th, 1923, they were authorized to take the necessary steps?

A. Yes.

Q. 569. And you mean by necessary steps to execute deeds?

A. Yes.

Q. 570. And bills of sale and so forth?

A. Yes.

Q. 571. Were deeds and bills of sales executed?

A. Yes.

Q. 572. When?

A. I will look at the deeds and tell you. The deed of the Merrimack properties is dated June 21, 1923. Deed of Keene property is dated June 20, 1923. Deed of Newport property is dated—the date is incomplete, but it was acknowledged June 20, 1923, before a notary. The deed of Windsor properties dated June 20th, 1923. Claremont deed dated June 20, 1923. The Manchester deed dated June 20, 1923.

Q. 573. How many deeds were executed by the W. H. McElwain Company to the International Shoe Company, and to which you have just referred?

A. I have just referred to six deeds.

Q. 574. Were they all the deeds that were executed?

A. I do not know.

[fol. 263] Mr. Brindley: Have you any other deeds, Mr. Blake, besides these six?

[Discussion had, not reported, by direction of Examiner.]

Mr. Blake: The respondent will now make this formal stipulation in the record regarding the deeds and other instruments of conveyance executed by W. H. McElwain Company to the International Shoe Company: The real estate of the W. H. McElwain Company was located in five different cities and towns in the State of New Hampshire and in one town in Vermont, consequently six deeds were drawn, each deed covering all of the real estate in the respective cities or towns mentioned in each deed. There was no other real estate of the W. H. McElwain Company at that time, and none other was deeded to the International Shoe Company. In addition to the six deeds just mentioned the W. H. McElwain Company executed various conveyances transferring to the International Shoe Company patents, trade marks, leases and so forth. Most of these conveyances were executed after the stockholders' meeting of W. H. McElwain Company, that is, on the afternoon of June 20th, 1923. Some were executed within two weeks after June 20th, 1923. The consents to the assignment of some of the leases had to be obtained from the

landlords, and were not secured for some days or weeks after June 20th, 1923. I think that covers the situation.

Owing to a realization of the fact that numerous instruments of transfer would be necessary, and in anticipation and expectation of the acceptance of the offer made by the International Shoe Company to the W. H. McE wain Company, these instruments, or many of them, were prepared in advance of June 20, 1923, so as to have them ready for execution when the stockholders of the W. H. McElwain Company should have accepted the offer. That was done in order to expedite matters.

Examiner Bennett: Will you indicate under whose direction they were prepared?

Mr. Blake: The deeds were prepared by Mr. C. P. Warren, the president of the W. H. McElwain Company, who in former years had been familiar with the real properties [fol. 264] of the W. H. McElwain Company as its attorney. Many of the other conveyances were also prepared by Mr. Warren, who had a record of trade marks, patents, and so forth. Transfers of leases were partly prepared by Mr. Blake and partly by Mr. Warren. Each of the six deeds above mentioned was executed by W. H. McElwain Company by Clifford P. Warren, its president, and recite a consideration from the International Shoe Company "of the sum of one dollar and other valuable considerations to it in hand paid before the delivery hereof, well and truly paid by the International Shoe Company, the receipt whereof is hereby acknowledged"; and five of the deeds are witnessed by R. E. Blake and one by C. S. Howland, and are dated the twentieth day of June 1923, except one, which is dated the twenty-first day of June 1923. Each deed carries cancelled United States Revenue documentary stamps as follows: In the City of Manchester, County of Hillsborough, in the State of New Hampshire, $1,257, $224.50 for the property in the town of Merrimack, in the county of Hillsborough. For the Claremont property $199.50. For the Keene property $152.50. For the Newport property $89.50; and in the town of Windsor, Vermont, $4.

Q. 575. Mr. King, you have before you the six deeds executed by the W. H. McElwain Company to the International Shoe Company, have you?

A. I have.

Q. 576. And you have examined all of them and are familiar with their contents?

A. No; I have examined them this morning; I am not familiar with the contents in detail.

Q. 577. You are familiar with them in a general way?

A. Yes.

Q. 578. And you know they are deeds executed by the W. H. McElwain Company to the International Shoe Company?

A. Yes.

Q. 579. Have any of the deeds been placed of record?

A. They have not.

Q. 580. After the meeting of the stockholders of the W. H. McElwain Company in Boston on June 20th, 1923, where did you go?

A. I went to New York that night.

Q. 581. And you were in New York then on June 21st?

A. Yes.

[fol. 265] Q. 582. Who accompanied you to New York?

A. I do not know whether anybody accompanied me to New York in the sense in which I understand you to use the word accompany.

Q. 583. Were any of the officers of the W. H. McElwain Company with you in New York City on June 21, 1923?

A. Yes.

Q. 584. Who were they?

A. C. P. Warren, president of the W. H. McElwain Company, was in New York the following day.

Q. 585. Any officer or agent of the International Shoe Company in New York with you at that time?

A. Mr. R. E. Blake.

Q. 586. Did you make any report to the International Shoe Company as to the stockholders' meeting of June 20th at Boston?

A. I believe I sent a telegram to Mr. Rand.

Q. 587. Was that the telegram that was read into the record, or a copy placed in the record, a day or two ago?

A. Yes.

Q. 588. Did you write him any letter in regard to the transactions in that special stockholders' meeting?

A. I believe not.

Q. 589. What transactions occurred between you and Mr. Bonin in New York on June 21st, or subsequent dates, in reference to the McElwain transaction?

A. Answering that question, attempting to answer it exactly, I do not remember any transaction occurred between me and Mr. Bonin on that date.

Q. 590. Were you together?

A. We were.

Q. 591. At the bank?

A. We were at the bank at the same time.

Q. 592. Mr. Bonin was there at the time you deposited the four million dollar note, was he?

A. I believe he was.

Q. 593. What did he do while you were there?

A. I do not think I know. I have already testified to the fact that I deposited a four million dollar note of the International Shoe Company at the bank and I deposited a check from Bennett, Limited, to the International Shoe Company at the bank to the account of the International Shoe Company.

Q. 594. That was the check you testified about a few moments ago?

A. That I had received some days before.

Q. 595. Some days before?

A. Yes, sir.

[fol. 266] Q. 596. And that check was drawn on the bank where deposited?

A. It was.

Q. 597. That was a certified check?

A. It was not.

Q. 598. You had accepted it several days before?

A. I had.

Q. 599. At the time you accepted it did you know whether or not it was good?

A. I did not.

Q. 600. Did you know whether or not Bennett, Limited, had any account at that bank?

A. I knew they had an account at the bank.

Q. 601. You did not know the amount of it?

A. The amount of their account?

Q. 602. Yes.

A. I did not.

Q. 603. You did not know anything about whether the check was good or bad?

A. I knew the standing of Bennett, Limited.

Q. 604. You did not know anything about the check?

A. No.

Q. 605. So far as your knowledge went, when you accepted it the check might have been absolutely worthless?

A. It might have been.

Q. 606. And you made no effort to inform yourself whether it was a good or bad check?

A. Other than my knowledge of Bennett, Limited, and of their financial standing. I knew of them.

Q. 607. Were you with Mr. Bonin or any other representative of the Bennett, Limited, at the time it made any arrangement with the New York bank for taking care of that check?

A. I was with Mr. Bonin so long as he was in the bank that morning, as I recall; we were both in the bank at the same time; I recall we went out of the bank at about the same time.

Q. 608. What was his transaction with the bank while you were with him?

A. That I do not know.

Q. 609. Do you know anything at all about the arrangements he made at that time with the bank in reference to this transaction?

A. To the best of my recollection, he deposited a check in the bank when I was there; I cannot testify as to the amount of that check.

Q. 610. Can you testify as to what check it was?

A. It was the check of the W. H. McElwain Company.

[fol. 267] Q. 611. Payable to whom?

A. As I recall, Bennett, Limited.

Q. 612. And for what amount?

A. I do not know.

Q. 613. What was it for?

A. My recollection is it was a liquidating check.

Q. 614. What do you mean by liquidating check?

A. I mean a check given by McElwain Company liquidating the portion of its capital liability.

Q. 615. What was that portion of its capital liability?

A. It was the number of shares owned by Bennett, Limited, in proportion to the total number of shares outstanding.

Q. 616. And that is the amount of shares mentioned in the contract between you and Bennett, Limited?

A. That is the number of first preferred shares I should say.

Q. 617. Did this check then from the McElwain Company to Bennett, Limited, pay for the amount of first preferred shares of the McElwain Company transferred to Bennett, Limited?

A. As I understand it, this check was one of a series of checks issued by W. H. McElwain Company to its respective first preferred stockholders in liquidation of the company.

Q. 618. The Bennett, Limited, then had all the first preferred shares, didn't it?

A. It did not.

Q. 619. Except how many?

A. Thirty-five.

Q. 620. And they were owned by the stockholders you mentioned?

A. No.

Q. 621. Who were they owned by?

A. They were owned by six, as I recall, small stockholders.

Q. 622. And was a series of checks given to those six small stockholders?

A. My understanding is that each of those small stockholders—I am now testifying to what I am told, not what I saw or knew—was advised that the money was on deposit and that he could have his liquidating share upon presentation of his certificate at the transfer office for stamping,—that a liquidating dividend had been paid.

Q. 623. Liquidating dividend?

A. I am using language of the layman, colonel.

Q. 624. What do you mean by liquidating that, liquidat-

[fol. 268] ing the preferred stock liability?

A. I mean liquidating the W. H. McElwain Company as a corporation.

Q. 625. As a corporation?

A. Yes, sir.

Q. 626. So then the transaction of June 20th, 1923, included the liquidation of the corporate existence of the W. H. McElwain Company, did it?

A. It included steps looking toward the liquidation.

Q. 627. And then the W. H. McElwain Company gave each of its first preferred stockholders a check in payment of the amount of the first preferred stock held by the respective stockholders, did it?

A. It meant they offered each first preferred stockholder a proportionate share of the cash in the company's treasury.

Q. 628. How much cash did it have in its treasury?

A. That I do not know.

Q. 629. You do not know the amount of the check that was given by W. H. McElwain Company to Bennett, Limited?

A. No, I do not.

Q. 630. You know all about that transaction, though, don't you?

A. I know what I have testified to, colonel.

Q. 631. And nothing more?

A. Yes, I know more than that.

Q. 632. Tell me about that.

A. You ask me the questions and I will try to tell you.

Q. 633. I want to know about it; all that plan was carried out under your direction and supervision, wasn't it?

A. No.

Q. 634. Weren't you the guiding star in all of this performance?

A. Well, I was responsible for a good deal of it.

Q. 635. It was your plan that was being carried out?

A. Yes; certainly.

By Examiner Bennett:

Q. 636. Mr. Warren was with you?

A. Was where with me?

Q. 637. In New York?

A. Yes.

Q. 638. At the bank?

A. Yes.

Q. 639. And he deposited on that date that check from the International?

A. I believe he did.

Q. 640. In the name of the McElwain Company?

A. Yes.

[fol. 269] Q. 641. And then had a credit in the bank there equal to that amount?

A. At least equal to that amount; yes.

Q. 642. Was it your information that it was against that credit that he drew the checks to the preferred stockholders, including Bennett, Limited?

A. It is. I do not know whether that is the total amount of the credit he had there or not.

Examiner Bennett: That is all I want to ask now. I just wanted to bring that in.

The Witness: I might state this further, if you like, colonel, that some of those stockholders have not yet taken their checks and some have.

By Examiner Bennett:

Q. 643. Do you know whether the Bennett, Limited, has taken its check?

A. Yes, it did, and I think three of the other stockholders.

By Mr. Brindley:

Q. 644. In what business is Bennett, Limited, engaged?

A. They are engaged in the business of manufacturing leather-board and fibre-board, in the business of the production of electric power, and the sale of power; and they have at different times bought and sold securities.

Q. 645. And Bennett, Limited, is a Canadian corporation, is it?

A. I understand so.

Q. 646. Has it any office in the United States?

A. Not that I know of.

Q. 647. Did it have at the time these transactions you testified about occurred?

A. Not that I know of.

Q. 648. Had it to your knowledge made any other transaction like this before you dealt with it?

A. It had made other purchases of securities in the United States.

Q. 649. Has it made any other such transaction as the one you have detailed since June 20th, 1923, in the United States?

A. That I do not know.

Q. 650. Do you know where Mr. Bonin is now?

A. I assume him to be in Chambly; I do not know.

Q. 651. Do you know his postoffice address?

A. Chambly, Province of Quebec, as I understand, is his postoffice address.

Q. 652. Have you ever seen him in the United States [fol. 270] since June 21, 1923?

A. Since June 1923 I have not seen him in the United States.

Q. 653. You knew all the time these transactions were going on, did you not, that it was the purpose of he International Shoe Company to acquire the plants, properties and assets of the W. H. McElwain Company?

A. I tried to testify as to that yesterday.

Q. 654. Answer my question, please.

A. I knew it was their purpose, unless I could sell them; I attempted to sell them.

Q. 655. You wrote a letter to Mr. Rand prior to this transaction and said it was the purpose of the International Shoe Company to acquire the plants and assets, didn't you?

A. Before this transaction?

Q. 656. Yes.

A. I do not know.

Q. 657. Look at Respondent's Exhibit Number 22 and see if you recognize that.

A. I do.

Q. 658. What is it?

A. That is a letter I wrote Mr. Blake on February 20, 1923.

Q. 659. You knew then, February 20, 1923, that it was the desire or the purpose to have all of the assets of the

McElwain Company transferred to the International Shoe Company, didn't you?

A. I knew that long before that.

Q. 660. And you knew it practically all the time since the International Shoe Company had acquired the stock of the W. H. McElwain Company, didn't you?

A. Yes.

Q. 661. You knew that when you were in conference here in St. Louis with Mr. Rand and Mr. Blake after the complaint in this proceeding had been issued?

A. I knew that that had been the purpose of the company from the time it first acquired the stock, but the situation in this conference was changed, radically changed, by a complaint filed by the Federal Trade Commission.

Q. 662. I believe you testified that in that conference in St. Louis, after the complaint was issued, when you came to St. Louis from Washington, Mr. Rand suggested the plan of having the W. H. McElwain Company transfer and deed its assets to the International Shoe Company and have the W. H. McElwain Company dissolved?

A. That is not correct, colonel.

[fol. 271] Q. 663. Tell me what it was.

A. The question you are asking, as I understand, refers to a subsequent conference in St. Louis when I was not present. The conference at which I was present at St. Louis, which took place on May 22d, as I recall, I testified that at that conference I suggested to the gentlemen in St. Louis that I might attempt to sell the assets of the W. H. McElwain Company and that I knew of only three possible customers; that I did not think it would be possible to sell to them. I suggested also that we sell the securities of the company, and I suggested the possibility of selling those securities to Mr. Burr of New York. Those suggestions seemed to meet the approval of the other gentlemen in the conference.

Q. 664. Didn't you testify yesterday that when the plan or program was made known to you of having the W. H. McElwain Company transfer and convey its assets and property to the International Shoe Company that you objected to it and said it would not work or was not feasible?

A. I testified I did that in Boston by long distance to Mr. Rand.

Q. 665. You told Mr. Rand his plan was not feasible?

A. I did not believe in it.

Q. 666. And you had a better one?

A. I thought I had a better one.

Q. 667. And the better one you had in mind is the one you have detailed here on the stand?

A. Yes.

Q. 668. And you, therefore, worked out the plan about which you testified?

A. Yes.

Q. 669. And the transactions which you have detailed?

A. Yes.

Q. 670. And as a result of your plan the International Shoe Company secured all the plants, assets and properties of the W. H. McElwain Company under the deeds and conveyances you have mentioned?

A. Yes.

Q. 671. It got all of the property, didn't it?

A. All that I know of.

Q. 672. At an expenditure of how much?

A. $4,063,125.89.

[fol. 272] Q. 673. Now, how much did it receive from the Bennett, Limited, for the stock?

A. $4,061,094.14.

Q. 674. That makes a difference of how much?

A. $2,031.75 is the mathematical difference.

Q. 675. That is what it cost the International Shoe Company to acquire the plants, properties and assets, isn't it?

A. No, sir not to my understanding.

Q. 676. It did acquire all of the plants and properties under the plan you devised and worked out with the Bennett, Limited?

A. It did acquire them all.

Q. 677. That was just exactly the plan that Mr. Rand had in mind, wasn't it, so far as results go?

A. So far as the acquisition of the—I think there are other results involved.

Q. 678. I am talking about the results you brought about through your transaction and the results that Mr. Rand desired.

A. I think I brought about results which Mr. Rand's plan would not have brought about.

Q. 679. It brought about the transfer to the International Shoe Company of all of the assets of the W. H. McElwain Company, didn't it?

A. Yes.

Q. 680. And that is what Mr. Rand's plan contemplated?

A. Yes.

Q. 681. Tell me this: What is the difference in the results of this evasive, circuitous and unbelievable program as you devised——

Mr. Blake: I object to the adjectives that you are using.

Mr. Brindley: Let me get my question in there and then object to anything you want to.

Q. 681. (Continuing:) —plan which you devised and carried out, and the frank, open, direct plan suggested by Mr. Rand?

A. I will answer that question this way:

Mr. Blake: Just a minute. I object to the way in which that question was put. Counsel is attempting to make the witness admit the plan as worked out was evasive and had other characteristics which are not justified by the record. [fol. 273] Mr. Brindley: I think that is a perfectly legitimate question and I would like to have him explain it.

Examiner Bennett: I will note the objection and let him answer if he wishes.

Mr. Blake: Note an exception.

Q. 682. Just answer the question, please, Mr. King.

Examiner Bennett: You may answer it in any way you choose and as fully as you wish.

A. I entirely disagree with the characterization which you apply to the program which was carried out. In my opinion the program carried out had different results from what would have ensued had Mr. Rand's program been carried out. I would like to comment on some of the differences in the result, if I may do so.

Q. 683. I do not care how much you comment if you will answer my question.

A. I am still continuing to answer your question, colonel, under the permission accorded me by the examiner.

Examiner Bennett: Go ahead with your answer.

Q. 684. I will give you all the latitude you want in answering the question.

A. The plan which I suggested had this to me substantial difference from the plan Mr. Rand suggested: Under Mr. Rand's plan the offer of the International Shoe Company for the assets of the McElwain Company would have been submitted to McElwain stockholders, practically all of whom were employees of the International Shoe Company. Under the plan which I suggested that offer was submitted to McElwain stockholders, none of whom were employees of the International Shoe Company, and so far as I know none of them were stockholders of the International Shoe Company.

Under the plan Mr. Rand suggested the officers and directors of W. H. McElwain Company who would have carried out the details of the transaction if it had been approved by the stockholders were men all of whom were, with one exception, stockholders and employees of the International Shoe Company and under their direction.

Under the plan I proposed those transactions were carried [fol. 274] out by the officers and directors of W. H. McElwain Company, none of whom were, to the best of my knowledge, stockholders or employees of the International Shoe Company.

That has an important bearing because at that time, as I have testified, I was in negotiation with an outside stockholder of the McElwain Company whose lawyer and whose agent had for about two years been threatening to use what I considered hold-up tactics. They were contemplating a bill in equity and other legal procedure to interfere with the International Company, frankly, as stated by their lawyer to me, for the purpose of causing trouble and realizing on what their lawyer told me was their "nuisance" value. I felt and now feel that the plan I proposed had different legal and business results, and my impression is that the lawyer for the outstanding stockholder reached the same conclusion, and my impression is that I saved the International Shoe Company from a serious and expensive legal and accounting expense; and I further think that the results of the transactions I attempted to carry out are not confined solely, as is implied in the question,

to the bare cost of certain properties and payment of certain amounts of money.

Q. 685. Have you finished?

A. Yes.

Q. 686. You have detailed the difference in your opinion of the two plans, have you?

A. In spite of my long answer, I did not mean it to include all of the differences.

Q. 687. But it was a differentiation, in your opinion, of the plan you carried through and the plan proposed by Mr. Rand?

A. Yes, a part of the differences.

Q. 688. A part of the differences in the two plans?

A. Yes.

Q. 689. Mr. Rand's plan was just open and direct, right straight to the proposition, wasn't it?

A. His was open and direct and straight to the proposition.

Q. 690. Tell me the difference in the result of the plan you devised and carried out and the open, direct proposition Mr. Rand suggested.

A. I have attempted to cover that in what I have already said.

Q. 691. You just said that you covered the differences in [fol. 275] the two plans; I want you to tell me the difference in the results of the plan you carried out and this one suggested Mr. Rand.

A. One difference in the result, in my opinion, is what I have already attempted to state, a difference in result in my negotiations with Boston lawyers for an outstanding stockholder. I think the result on my plan is substantially different from what it would have been on the other plan.

Q. 692. What is the difference between the plan you devised and carried out and the suggestion of Mr. Rand in regard to the assets and properties of the W. H. McElwain Company?

A. One difference is, as I have already testified, that the offer of the International Shoe Company when it was tendered to McElwain Company was passed upon by stockholders and directors of the McElwain Company who were independent in every respect of the International Shoe Company; while under Mr. Rand's plan it would have been passed upon by stockholders of the McElwain Company

and directors of the McElwain Company, most of whom were associated as employees or stockholders of the International Shoe Company, and that seemed to be a radical difference, as a business man.

Q. 693. That is a difference in the carrying out of the two plans and not a difference in the result you have detailed?

A. The results flow from that difference in the plan. I cannot testify, and no one can testify, as to what the result upon Mr. Wigglesworth and his attorneys and their proceedings would have been if Mr. Rand's plan had been carried out, but I believe the results would have been very different.

Q. 694. That is your belief, is it?

A. Absolutely.

Q. 695. That the results so far as litigation goes would have been different; is that what you mean?

A. Litigation and subsequent to litigation.

Q. 696. And subsequent to litigation?

A. Yes.

Q. 697. But the thing you feared then was the details of carrying out the two plans; was that it?

A. No.

Q. 698. In other words, you thought the result would be in a better situation if it was carried out under your plan [fol. 276] than under Mr. Rand's plan; isn't that it?

A. I do not know that I can testify in answer to that question any more than to say I thought and think my plan was a sounder plan; and I would like to say this, if I may, the submission of an offer by the International Shoe Company to independent McElwain stockholders and directors seems to me a fairer and sounder method of doing business than a submission of offers to employees of the International Shoe Company.

Q. 699. In other words, you mean that the men who took the place of you and in the International Shoe Company as stockholders of the McElwain Company were fairer and sounder men than you and the International Shoe Company; is that it?

A. No, I do not. No, I do not.

Q. 700. Did you not by the method you devised and carried out accomplish the same results which Mr. Rand stated to you he desired?

A. I have attempted to answer that question, and I will answer it now, no.

Q. 701. You secured by this plan you devised and carried out the transfer to the International Shoe Company all of the plants and assets and properties of the McElwain Company?

A. That was one of the results of the chain of events.

Q. 702. And that is just exactly what Mr. Rand told you the International Shoe Company wanted, wasn't it?

A. I have already testified that is what he told me he wanted.

Q. 703. You understood that all the time, didn't you?

A. I understood all the time, Colonel Brindley, if I could sell its assets, outright and forever, the International Shoe Company would be perfectly delighted, and so would I.

Q. 704. Please answer my question.

A. I was trying to answer what I understood as to the attitude of the principal officers of the International Shoe Company.

Q. 705. And you understood they desired to secure the plants, properties and assets of the W. H. McElwain Company?

A. My answer is that they would have welcomed a sale of the properties, plants and assets, if I had been able to make the sale, but I was unable to make it.

[fol. 277] Q. 706. You do not answer my question direct; any man of intelligence knows you do not answer my question.

A. Do not flatter my intelligence; I am trying to answer the question to the best of my ability.

Q. 707. You have already answered it and I simply want you to answer it again.

A. I am trying each time to answer it to the best of my ability—each time it is phrased a different way.

Q. 708. I have a better opinion of your ability than that, Mr. King. You can answer questions better than that.

A. Is it contempt of court possibly to say you can ask questions better?

Q. 709. Not a bit in the world?

A. Try again.

Q. 710. Did you not understand all the time that it was the desire of Mr. Rand and other officers of the International Shoe Company to acquire the assets, plants and properties of the W. H. McElwain Company?

A. Yes, unless I was able to sell them outright.

Q. 711. And in pursuance of that understanding you devised and carried through the plan with Bennett, Limited, which you have detailed, did you?

A. With a full knowledge of that attitude of the officers of the International Shoe Company, I did the things to which I have testified.

Q. 712. And brought about the transfer and conveyance to the International Shoe Company of all of the property of the W. H. McElwain Company?

A. And that result ensued from the acts to which I have testified.

Q. 713. You brought that about through your negotiations, didn't you?

A. That resulted from my acts and the acts of a number of other men.

Q. 714. But you initiated and suggested it?

A. Yes.

Q. 715. And were enabled to carry it through?

A. Yes.

Q. 716. What caused the difference of $2,031.75 between the amount paid by Bennett, Limited, for the stock it acquired from the International Shoe Company and the amount paid by the International Shoe Company to McElwain & Company for all of the plants, properties and assets?

A. The price paid by Bennett, Limited, to the International Shoe Company for the securities acquired was fixed [fol. 278] at what I felt was a fair value for those securities, which represented substantially all of the outstanding stock of the McElwain Company, except such as was to be turned in for cancellation. The price paid by the International Shoe Company for the property and assets of the W. H. McElwain Company was based on an offer of the International Shoe Company in which the amount offered was computed upon the net book value of the assets at the latest trial balance available, to which was added the sum

of $1,500,000 to cover possible earnings of the McElwain Company since the date of the last trial balance, the amount of which could not yet be determined, and to cover any other possible items not listed in the balance sheet, so that the offer might be a fair or more than fair figure for the property for which the offer was made. That is a long answer.

Q. 717. And did not answer the question. Who received this sum of $2,031.75, the difference between what the International Shoe Company received from Bennett, Limited, and what it paid back to the McElwain Company?

A. Somewhere between $2,000 and $2,500, the exact amount of which I do not know, was due to six outstanding first preferred stockholders of the W. H. McElwain Company and available for them upon turning in their certificates for stamping, as I have testified.

Q. 718. And this sum of $2,031.75 was the estimated amount necessary to take care of those first preferred stockholders?

A. I cannot testify whether that is the amount or not; I do not know.

Q. 719. That difference was in there for that purpose, of taking care of those other first preferred stockholders and buying their stock?

A. There was from two thousand to twenty-five hundred available for that purpose.

Q. 720. It was used for that purpose?

A. It was used for that purpose; yes.

Examiner Bennett: At this time we will take a recess for lunch; we will meet at 2 o'clock this afternoon.

[Thereupon at 12:15 o'clock, noon, May 30, 1924, a recess was had until 2 o'clock p. m. of the same day.]

After Recess, 2 p. m.

[fol. 279] Q. 721. Mr. King, after the special meeting of the stockholders of the W. H. McElwain Company at Boston, on June 20, 1923, it was the next day that you went to New York?

A. It was that night.

Q. 722. It was that night?

A. Yes.

Q. 723. Then you were in New York the next morning?

A. Yes.

Q. 724. And if Mr. Bonin and Mr. Warren did not accompany you they at least went to New York also?

A. Yes; I think my recollection is they went in the afternoon and I went at midnight, but I am not sure about that.

Q. 725. Did you three meet the next morning?

A. Yes, at the Bank of Commerce.

Q. 726. That was the morning of June 21, 1923?

A. Yes.

Q. 727. When you went from Boston to New York you carried with you the check of Bennett, Limited?

A. Yes.

Q. 728. For the payment of the stock it purchased from the International Shoe Company?

A. Either Mr. Blake or I carried the check; I am not sure which. I think I carried it.

Q. 729. At least it was one or the other?

A. Yes.

Q. 730. And that was the check that had been drawn a few days previously?

A. Yes.

Q. 731. And held under agreement, did you say, not to present it immediately?

A. It was understood I would not present it immediately; yes.

Q. 732. When did you receive the note of the International Shoe Company for four million dollars?

A. I received that note, to the best of my recollection, either the 19th or 20th.

Q. 733. Where did you receive it?

A. I do not know whether I received it by mail to me in Boston, or Mr. Blake handed it to me in Boston.

Q. 734. Wasn't it sent to you in care of the National Bank of Commerce in New York?

A. It may have been; I do not know.

Q. 735. Can you refer to your letters and ascertain about that?

A. Referring to the files, I find a letter from Mr. Rand [fol. 280] to me dated June 18, 1923, addressed to me at 590 Atlantic Avenue, Boston, with which is enclosed check on

the National Bank of Commerce for $4,063,125.89, which is the check referred to, and International Shoe Company's note in favor of National Bank of Commerce in the amount of $4,000,000, which is the note referred to.

Q. 736. What is the date of that letter from Mr. Rand to you?

A. June 18th; addressed to me in Boston.

Q. 737. So it reached you, then, in Boston before you went to New York on the night of June 20th?

A. It probably reached me in Boston on June 20th, before I went to New York.

Q. 738. So you had that note with you when you were in the Bank of Commerce in New York?

A. Yes.

Q. 739. You have the note in your hand?

A. I have the note.

Q. 740. And you recognize that as the one?

A. I do.

Q. 741. Was it during the forenoon of June 21, 1923, you deposited that note with the National Bank of Commerce?

A. I did.

Q. 742. And the proceeds of it, in the amount of $4,000,000, were credited to the account of the International Shoe Company?

A. They were.

Q. 743. I believe you stated this morning you did that during the forenoon of June 21st?

A. That is my recollection.

Q. 744. You also had with you the check of the Bennett, Limited, to the International Shoe Company?

A. I did. That is my recollection; either Mr. Blake or I had it, and my recollection is I had it.

Q. 745. And what disposition was made of that check?

A. My recollection is I deposited it, but either Mr. Blake or I deposited it in the National Bank of Commerce to the account of the International Shoe Company.

Q. 746. It was payable to the order of the International Shoe Company?

A. It was; yes.

Q. 747. Who endorsed it for the International Shoe Company?

A. I do not recollect.

Q. 748. And you also had with you, which you had received at Boston, the check of the International Shoe Company to the W. H. McElwain Company for $4,063,125.89? [fol. 281] A. Yes; but my recollection is that check was paid to McElwain Company the previous afternoon in Boston.

Q. 749. In Boston?

A. And was taken over to New York by Clifford P. Warren, president of W. H. McElwain Company; that is my recollection.

Q. 750. You mean it was delivered to the W. H. McElwain Company the previous afternoon?

A. Yes; and my recollection is he took the check to New York.

Q. 751. What disposition did Mr. Warren, the president of the McElwain Company, make of the International Shoe Company check?

A. My recollection is that he deposited that in the Bank of Commerce to the account of the W. H. McElwain Company.

Q. 752. Where did the Bennett, Limited, secure the funds with which its check to the International Shoe Company was paid?

A. Well, I have testified this morning that Bennett, Limited, previously had an account in the National Bank of Commerce; I also testified this morning that Bonin had a check from W. H. McElwain Company to Bennett, Limited; according to my recollection, he deposited it to the account of Bennett, Limited, in the National Bank of Commerce that same morning.

Q. 753. Do you remember the amount of that check?

A. No, I do not remember the amount of that check. I do not think I have any record of the amount of that check, but it was a check for over four million dollars.

Q. 754. And that check to W. H. McElwain Company to the order of Bennett, Limited, was drawn by Warren, the president of the W. H. McElwain Company, on the National Bank of Commerce also?

A. That is my recollection.

Q. 755. It was drawn then against the fund which the president of the W. H. McElwain Company had that day placed with the National Bank of Commerce?

A. Yes, I should think so.

Q. 756. And your recollection is that the check of W. H. McElwain Company to Bennett, Limited, was a little in excess of four million dollars?

A. Yes, a number of thousands—somewhat above four million dollars.

Q. 757. It was a portion of the amount for which the [fol. 282] International Shoe Company's check was drawn to the order of the W. H. McElwain Company?

A. That is true; yes.

Q. 758. And it was payable to Bennett, Limited, for the proportionate amount of stock of the W. H. McElwain Company held by the Bennett, Limited, in that company, was it?

A. The proportionate amount of first preferred stock.

Q. 759. The proportionate amount of the first preferred stock?

A. Yes, that is true.

Q. 760. When was the $4,000,000 note of the International Shoe Company to the National Bank of Commerce paid?

A. June 21st.

Q. 761. The same day it was deposited?

A. The same day it was deposited.

Q. 762. When that note was paid was it re-delivered to you?

A. It was not.

Q. 763. To whom was it delivered?

A. It was mailed to the International Shoe Company at St. Louis.

Q. 764. It was not delivered then to you?

A. No.

Q. 765. Nor to Mr. Blake?

A. No.

Q. 766. The check of the International Shoe Company to W. H. McElwain Company in compliance with the offer of June 4th, and which you delivered to Mr. Warren, and which he deposited in the National Bank of Commerce, constituted then the total assets of the W. H. McElwain Company, did it?

A. Substantially; I am not sure whether there was any other asset or not. Unless there was a small cash asset in addition, all the assets.

Q. 767. All tangible property and assets of every kind so far as you knew were included in the sale to the International Shoe Company?

A. That is true.

Q. 768. And the proceeds of the check from the International Shoe Company to W. H. McElwain Company were disbursed after being deposited in the National Bank of Commerce by Warren, its president?

A. Yes.

Q. 769. So following the transactions at the National Bank of Commerce the W. H. McElwain Company had no assets and no property of any kind, had it?

A. That is not quite true, because it was not all disbursed that day, nor has it been all disbursed since that [fol. 283] date, so far as I know. Three first preferred stockholders, at least the last time I was informed, had not yet called on them for their money.

Q. 770. And that is awaiting them there yet?

A. It is awaiting them. It is not awaiting them in New York but it was given to the Old Colony Trust Company in Boston, the transfer agent.

Q. 771. But that proportionate amount of that fund is awaiting them?

A. Yes.

Q. 772. And they can get it whenever they call for it?

A. Yes.

Q. 773. With that exception, then, the W. H. McElwain Company had no properties or assets of any kind?

A. That is my understanding.

Q. 774. And its debts were all assumed by the International Shoe Company, so it owes no debts?

A. Unless it has contracted some since that time.

Q. 775. Who filled in the date on that $4,000,000 note of the International Shoe Company?

A. I did.

Q. 776. After the International Shoe Company acquired the capital stock of the W. H. McElwain Company and announcement of the acquisition had been made, did the International Shoe Company conduct the business of the W. H. McElwain Company?

A. You are speaking of 1921?

Q. 777. After the acquisition of the stock and up to the time of the complaint.

A. I can answer that in this way: the business was conducted by the McElwain officers and organization in the east, who advised with the organization of the International Shoe Company back and forth, corresponding department heads advising with corresponding department heads.

Q. 778. And appropriate instructions being given and received?

A. So far as I know, few, if any, instructions were issued. Matters were discussed and a course of action decided on.

Q. 779. The former offices of the W. H. McElwain Company in Boston were maintained?

A. Yes, the former offices of the W. H. McElwain Company in Boston were maintained until May or April, 1922, when they were moved and the old offices given up.

Q. 780. In 1923 was it being conducted under the name [fol. 284] International Shoe Company, with its other branches? For instance, was it the W. H. McElwain branch of the International Shoe Company, like Roberts, Johnson & Rand branch of the International Shoe Company?

A. In 1923 the Boston branch was being conducted under the name of Hutchinson-Winch, which was the same, only with McElwain taken out; it used to be McElwain Hutchinson-Winch. "Hutchinson-Winch," and underneath it "Branch of International Shoe Company". In New York it was McElwain-Morse & Rogers formerly; the name was changed to "Morse & Rogers, Branch of International Shoe Company". The purchasing department up to June, 1923, used the form "W. H. McElwain Company" without the addition of the words "Branch, International Shoe Company". The manufacturing departments in New Hampshire used the name "W. H. McElwain Company," the corporate name, without the addition of the words "Branch of International Shoe Company". After June, 1923, the Boston purchasing departments used, and now use, the name "W. H. McElwain Company, Branch International Shoe Company"; and the manufacturing departments use that form. In substance, the manufacturing and purchasing departments used the name W. H. McElwain Company alone as long as the McElwain corporation was in control or was the owner of the assets, plants, and so forth. After

the assets were acquired by the International Shoe Company the phrase "Branch of International Shoe Company" was added to all of the stationery. So far as I was concerned—I think I have covered all of the other departments—I used the form W. H. McElwain Company for such letters as I wrote up to the time that the assets were transferred to the International Shoe Company, or about that time, and then had stationery printed "International Shoe Company," which I have used since that time.

Q. 781. How were the factories operated that manufactured the shoes?

A. I would like to have you detail that question a little bit as to what you mean by how they operated.

Q. 782. I mean in reference to names and who was operating it; that is what I want to know.

A. The factories up to June, 1923, were operated under [fol. 285] the name W. H. McElwain Company, and after that time, just as soon as stationery could be changed, under the name "W. H. McElwain Company, Branch International Shoe Company".

Q. 783. Commission's Exhibit Number 2 purports to be an advertisement in the New York World and is signed by the International Shoe Company and W. H. McElwain Company; did you prepare that advertisement?

A. No, I did not.

Q. 784. Do you know anything about the preparation of it?

A. Yes, I do know about the preparation of it.

Q. 785. Tell me about that. Mr. Rand said he thought it was prepared in Boston.

A. It was prepared in the east; it was prepared by Barton, Durstine & Osborne advertising agencies at New York City, who at that time had been advertising agents of the W. H. McElwain Company. I had nothing to do with the advertising department.

Q. 786. This is an authentic advertisement of the two companies?

A. Yes, sir.

Mr. Brindley: I believe that is all.

Cross-examination:

By Mr. Blake:

X Q. 787. Mr. King, in the spring of 1921, at the time the negotiations between W. H. McElwain Company and the International Shoe Company were begun, I believe you said you were vice-president and director and stockholder in the W. H. McElwain Company?

A. I was.

X Q. 788. Were you a rather large stockholder in the company?

A. Sort of medium-sized stockholder.

X Q. 789. By that you mean that as compared with the interest of some of the other men in the company you were medium?

A. Yes; I was much smaller than the large stockholders, and I was larger than a majority of the stockholders.

X Q. 790. At that time what was considered primarily your trade territory?

A. The district north of the Ohio River and east of Illinois.

X Q. 791. To what class of merchants did you sell primarily?

A. Primarily to independent wholesalers and jobbers and retailers in the principal cities.

[fol. 286] X Q. 792. Did you have any considerable or substantial business in the south, west and southwest?

A. Not in comparison with our total volume.

X Q. 793. What was the nature of the shoes that the W. H. McElwain Company sold?

A. Fine and medium men's and boys' welt, men's McKays, and we had begun about two months before the trade with the International Shoe Company to make a few misses' shoes, which were just coming into production.

X Q. 794. Tell us in what respect the construction and materials used in the McElwain shoes differed from those of the International Shoe Company, in the same general class of men's and boys' dress shoes.

A. The McElwain shoes in our opinion had a better finish and workmanship, more attractive, and more modern lasts, from the point of view of the city trade, than the shoes of

the International Shoe Company, and McElwain used substitutes for leather in its counters, heels, and to some extent in its inner soles, as to which the International Shoe Company use no substitutes for leather. Our shoes had, in our opinion, a more attractive finish and appearance and more up-to-date lasts and patterns.

X Q. 795. Is it not a fact also that the McElwain Company as a general policy in its business put the name of the customer on or stamped the name of the customer on the soles or heels of the shoes?

A. Our policy was in our retail business to put the name of the customer on the shoes wherever he wished it, and he usually did, both on the soles of the shoes, on the top facing and on the carton.

X Q. 796. Did that add any cost to the shoes?

A. Yes, it added a substantial cost to the shoes.

X Q. 797. Do you know what the policy of the International Shoe Company was with respect to stamping the names of the retailers on the soles or other parts of its shoes?

A. I understood they refused to do it.

X Q. 798. In the fall of 1920 was there any unusual condition that developed in the shoe and leather trade?

A. The most extreme drop in commodity prices developed at that time that has occurred in that trade in my lifetime.

[fol. 287] X Q. 799. What was the situation that the W. H. McElwain Company found itself in with respect to the commodities in which it was dealing at the time that drop in values came?

A. The W. H. McElwain Company in the winter of 1919-1920 contracted on what it thought was a conservative basis for a year's supply of hides in India, we were using India hides, and they had to be bought at one season of the year when hides were taken off and could not be bought from month to month. We had large numbers of hides in tanneries in process and we had large stocks of finished shoes, both in our warehouses in New Hampshire and in our branches. We had forward commitments on hides, leather and cloth and other materials.

X Q. 800. Were those forward contracts or those commitments and those materials that had already been delivered to you and more in process been bought at the high prices that prevailed prior to the drop in commodity prices?

A. Most of them had been bought either at peak prices or just under the peak.

X Q. 801. In the spring of 1921 what developed as to the sales and the outgo of the merchandise which W. H. McElwain Company was producing?

A. Beginning in the summer of 1920 orders for shoes almost completely stopped coming in, in spite of the best efforts of our salesmen. At the same time we had about seven million dollars' worth of orders, which had already been accepted, cancelled, or the shoes delivered under those orders were returned. The difficulty in getting orders continued through the winter of 1920-1921 and the spring of 1921.

X Q. 802. In round figures, what was approximately the total of the obligations of the W. H. McElwain Company to its banks?

A. At what time?

X Q. 803. In the spring of 1921?

A. On January 1, 1921, the W. H. McElwain Company owed to its banks of deposit $11,080,000. That was owed to twenty-three different banks of deposit. It owed to Massachusetts savings banks in Massachusetts, $1,230,000, which was owed to about forty-four savings banks in Massachusetts. It owed to other banks and trust com-
[fol. 288] panies, on notes discounted by F. S. Moseley & Company, $2,545,000, making the total indebtedness to banks just under $15,000,000.

X Q. 804. How many banks were your creditors at that time, including the banks of deposit, the savings banks and the creditors who had taken your paper through F. S. Moseley?

A. Twenty-three national banks of deposit, approximately forty-four savings banks, and through F. S. Moseley we discounted eighty-eight notes, but it does not appear on my records what banks they had sold those notes to.

X Q. 805. Were the conditions of the W. H. McElwain Company discussed by its executives at that time?

A. Almost daily.

X Q. 806. What was the feeling of the executives of the company at that time as to the condition of the company?

A. That it was rapidly going on the rocks.

X Q. 807. Did the officers make some effort to estimate how bad the situation with them was?

A. The treasurer of the company did.

X Q. 808. Have you a copy of the figures that he prepared on April 2, 1921?

A. I have.

X Q. 809. You can identify that paper which I have just handed you?

A. I can.

X Q. 810. Will you identify it and tell what the nature of it is?

A. This is a memorandum prepared by the treasurer of the company on April 2, 1921, of estimated losses in the current fiscal year which must be recognized in the balance sheet of May 31, 1921.

Mr. Blake: We offer that as Respondent's Exhibit Number 34, Mr. Examiner.

The Witness: Those were losses which had not yet been taken into the books of the company.

Examiner Bennett: The exhibit is received.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 34, Witness King," was received in evidence and is forwarded herewith.]

X Q. 811. And were in addition to the losses which showed on the books of the company at that time?

A. Yes.

[fol. 289] X Q. 812. What is the total of additional losses which had to be reckoned with according to the estimate of Mr. E. L. Prescott, your treasurer?

A. $3,289,000.

X Q. 813. I hand you another paper which I ask you to identify and tell what the nature of it is.

A. This is an estimated balance sheet of W. H. McElwain Company as of May 31, 1921, the close of its fiscal

year, prepared by the treasurer of the company on April 5, 1921, and covering his estimate of what the condition would be approximately two months later when the fiscal year closed.

Mr. Blake: Mr. Examiner, we offer that as the Respondent's Exhibit Number 35.

Examiner Bennett: It is recevied.

[Said document was thereupon marked, for identification, "Respondent's Exhibit No. 35, Witness King," was received in evidence and is forwarded herewith.]

The Witness: Exhibit Number 35 shows an estimated deficit of $3,145,000.

X Q. 814. Do you remember what the surplus of the company was on the balance sheet of May 31, 1920?

A. The surplus on the balance sheet of May 31, 1920, was $3,888,440.73.

X Q. 815. Will you compare there the loss in condition between May 31, 1920 and this estimated balance sheet as prepared by your treasurer on April 5th, 1921?

A. The apparent loss in condition was $7,033,440.

X Q. 816. What does the estimated balance sheet as prepared on April 5, 1921, show as to the estimated net quick assets of the company at that time?

A. It shows estimated net quick assets about $4,777,000.

X Q. 817. What does it show as to the estimated ratio of quick assets to it on that date?

A. Estimated ratio of 1.34 to 1.

X Q. 818. Mr. King, you are accustomed to estimating balance sheets, are you not?

A. Somewhat.

X Q. 819. Are you accustomed to sizing up the financial condition of different companies as a result of examination of balance sheets and statements?

A. Yes.

[fol. 290] X Q. 820. According to that statement, how would you describe the financial condition of W. H. McElwain Company at that time?

A. The financial condition of the McElwain Company at that time was practically insolvent and in my opinion at

the time, which I still hold, the company would have been actually insolvent upon the publication of those figures.

X Q. 821. Were you at that time in close touch with the financial condition of W. H. McElwain Company?

A. I had assumed responsibility for the finances of W. H. McElwain Company a few months before and for the past few months had been in continuous touch with its financial condition.

X Q. 822. You mean that you had more or less taken charge of the actual financing of the company?

A. The directors had placed me in charge.

X Q. 823. You mean by that there had been a change in connection with the financial of the company or the man who was handling the financing?

A. Yes; up to that time the responsibility for finances had rested with the treasurer of the company, and at his request and because of his very serious concern over the financial condition of the company he had asked the directors to relieve him of further responsibility for financing, which the directors did and placed that responsibility on me.

X Q. 824. Faced with this situation, what did the executives of the W. H. McElwain Company do?

A. They considered all possible alternatives for saving the company from receivership and liquidation; a study was made as to the possible alternatives; only one alternative seemed to offer any hope of success.

X Q. 825. What was that alternative?

A. That was to negotiate a sale of the company to the International Shoe Company, who seemed to be the only possible customer in the United States at that time, either in the shoe or leather business, who would be in a position to even consider such a transaction. The principal other large shoe companies in the country were, so far as our study indicated, none of them in a position to handle anything more than their own problems, and our study indicated there was no one in the leather business in the country able to handle financially any further problems [fol. 291] than those they already had. We made a fairly careful study and careful inquiries before reaching that result.

X Q. 826. After this study of the situation what did you do?

A. The president of the company and I asked the directors to authorize us to open negotiations with the International Shoe Company.

X Q. 827. Did they authorize you to do so?

A. Upon the first recommendation they declined to approve, and the recommendation was renewed some weeks later, with urgency, and the new recommendation was approved. We immediately opened negotiations with the International Shoe Company, within an hour after the approval of the directors. We conferred with our bankers to secure their approval also at the same time.

X Q. 828. What would have been the result had the W. H. McElwain Company attempted to go on without having secured a purchaser for its business?

A. In the shoe and leather industries the result would have been the most serious catastrophe that could have happened to the industry,—more serious than any that has happened in my time. It would have resulted at that time probably in a crisis in the affairs of a number of other companies in the industry who were themselves on the edge but not in as serious a condition as we were, and would have unsettled confidence to such an extent in the financial community as to have precipitated a series of failures. In New England it would have caused serious losses to some forty savings banks, serious losses to some twenty-three banks of deposit in New England, New York, Philadelphia, Cleveland and Chicago. It would have certainly resulted directly after May 31st in a receivership and liquidation of the McElwain Company; and in that liquidation it is doubtful whether the first preferred stockholders of McElwain Company would have received more on final liquidation than twenty dollars a share. The first preferred stock of the W. H. McElwain Company was held by some four thousand stockholders, many of whom were trustees. The stock was a legal trust investment in Massachusetts and in, I think, the other New England states. It would have completely wiped out the investment of all second preferred [fol. 292] stockholders, a large number of whom were workmen of ours at the bench who had bought the stock for par from their savings. It would have closed our factories.

X Q. 829. What as to the common stockholders?

A. The common stock would have been wiped out. That was held by the executives of the company and their fami-

lies, and about a third of it was held outside of the company altogether, and a substantial amount of the stock was pledged at different banks as collateral for loans, personal loans.

X Q. 830. You were about to state the effect on the factories.

A. We had approximately a dozen factories in New Hampshire, either owned or leased, where we had some six thousand employees. Those factories would have been closed. There was no customer for those factories, either in the shoe business or in any other business we knew of at that time, as all American industry was suffering from a severe depression. The shoe factories were constructed for shoe factories, and were not satisfactory for most other lines of manufacturing activity. In the city of Manchester our total employees were some thirty-three hundred. To the best of my knowledge, the McElwain industry in Manchester was the second industry in the city in size. I should say that approximately one-sixth of the city of Manchester at that time derived its livelihood from the McElwain business, directly from the McElwain business, counting our employees and the members of their families. Manchester is a fairly large city. In the city of Nashua we had something like one thousand employees. We were, I think, the second industry in the city of Nashua in the number of employees. Probably one-seventh of the inhabitants of Nashua derived their livelihood directly from the operation of our factory. In the town of Newport we had approximately five hundred employees. The town had a population of about four thousand. Practically a third of the town derived its livelihood from our factory. I think we were the largest industry in the town. In the town of Claremont we had about five hundred to five hundred and fifty employees. We were the second industry in size in Claremont. [fol. 293] Claremont had a population of about nine thousand. About a quarter of the town derived its livelihood from our factory. In the town of Merrimack we had about sixty employees, probably a little more at that time. We were the largest industry in that town. It is a small town of a thousand people. All of those employees would have been thrown out of work, and there was not any other place for them to go; and for the next two or three years it would

have been difficult for them to find employment in the shoe industry in New England. I think it would have been a stunning blow to every one of those towns.

X Q. 831. What was the general conditions as to employment in New England at that time?

A. Very bad.

X Q. 832. You mean to say that there was a general condition of unemployment in New England at that time?

A. There was.

X Q. 833. Was it a very bad condition of unemployment?

A. It was so bad a condition of unemployment that most of the cities had committees working on the problem and the state had committees working on the problem.

X Q. 834. What were the conditions in the whole country at that time with respect to employment?

A. Well, it was about that time that the President called a conference in Washington on unemployment because the condition of the country was so serious.

X Q. 835. Mr. King, go ahead with your narrative of the steps that were taken by the W. H. McElwain Company in order to meet this situation.

A. The W. H. McElwain Company immediately opened negotiations with the International Shoe Company. The first negotiations were in St. Louis, in this office, on April 8th, between Mr. Johnson and Mr. Moulton of the International Shoe Company, and Mr. McElwain and myself of the McElwain Company.

X Q. 836. Give us a brief statement of what occurred in that conference, Mr. King.

A. Mr. McElwain presented to the officers of the International Shoe Company a statement that the McElwain Company was in a serious condition and would be interested in negotiating a sale to International Shoe Company. The [fol. 294] McElwain business was discussed to some extent, and the nature of business, the present condition of orders, factories, and a rough summary of the apparent condition of McElwain Company's finances. Mr. Johnson stated that he did not know whether the International Shoe Company would be interested or not; that he would discuss the matter with Mr. Rand on the latter's return from Mexico, and if the International Company was interested they would come on to Boston to continue the conference. Mr. Mc-

Elwain's attitude through the conference was that of attempting to interest the International, and Mr. Johnson's attitude was that of showing no particular interest in the proposition.

X Q. 837. What was the net result of that conference?

A. There was no result to the conference other than the pending negotiations.

X Q. 838. When did the next conference take place?

A. Took place in Boston on the 25th, 26th and 27th of April.

X Q. 839. Give us a brief statement of what occurred in those conferences.

A. Mr. McElwain submitted further figures to the officers of the International Shoe Company, the apparent position of W. H. McElwain Company, its business, the nature of its business, its costs and factory capacity. Mr. Johnson stated that the International would not be interested in considering a proposition on any terms unless the McElwain Company first took a physical inventory and submitted an audited balance sheet. That they would not be interested in the proposition on anything except basis of sound value of the assets taken on the then market. Mr. Storrow, of Lee, Higginson, participated in one of the conferences, representing the first preferred stockholders of the McElwain Company. Mr. McElwain finally stated that the McElwain Company would immediately take an inventory and submit an audited balance sheet. The conference was continued the following day in New York, briefly, with no different results.

X Q. 840. When was the next conference held?

A. The next conference was held on May 8th in St. Louis, at Mr. Rand's house. Mr. McElwain presented to the officers of the International Shoe Company a tentative balance [fol. 295] sheet based on the inventory of April 30th, which the auditors had not yet completed auditing. Mr. Johnson asked Mr. McElwain and me to withdraw from the conference while they considered the balance sheet. When we returned Mr. Johnson stated that the balance sheet indicated a condition so much worse than they had anticipated they saw no way of proceeding with negotiations. Mr. McElwain was so seriously affected by this announcement that he made no answer and was unable for the balance of the day

to discuss the situation intelligently. He dropped out of the negotiations except as a listener. I suggested that Mr. Rand and I withdraw to consider the situation, which we did, and subsequently, on that day, came back with a suggested proposal. In my conference with Mr. Rand I attempted to sell the assets of the McElwain Company to the International Shoe Company and Mr. Rand advised me that the company would not be interested in the assets on any basis, except a liquidating basis, because they were not in a position to manage factories and tanners and plants at such a distance from St. Louis. We finally worked out a suggestion for final acquisition of the securities of the McElwain Company. I offered for McElwain and myself to turn over our securities without return and said we thought the other directors would agree to follow us, and suggested that the common stock be not considered in the transaction. Mr. Rand was unwilling to consider that proposal on the ground it would break the morale of the eastern organization, and a proposal was worked out which was submitted, which was approximately eighty per cent for the McElwain first preferred; eighty per cent for the second preferred, and sixty per cent for the common. The meeting adjourned to meet again that evening at Mr. Johnson's house.

X Q. 841. Where did you go after the adjournment?

A. I went with Mr. McElwain to the Jefferson Hotel. I found Mr. McElwain was entirely unable mentally to understand what had taken place that day or to understand the simple mathematics of the proposition that was under consideration. The conference was continued at Mr. Johnson's house that evening. Mr. Johnson suggested a change of basis of the proposed sale to 82½ per cent of par for the [fol. 296] first preferred, 75 per cent of par for the second preferred, and 50 per cent of par for the common, to which I consented.

X Q. 842. Who carried on the negotiations at Mr. Johnson's home that evening for the W. H. McElwain Company?

A. I did.

X Q. 843. Did Mr. McElwain participate?

A. Only as a spectator.

X Q. 844. When was the next conference?

A. We had conferences then the two following days in St. Louis, the 9th and 10th.

X Q. 845. They were for the purpose of merely working out the details?

A. For the purpose of working out details.

X Q. 846. What was the next conference?

A. The next conference was in Chicago about May 11th between Mr. Johnson and Mr. Rand, of the International Shoe Company, and Mr. McElwain and myself of the McElwain Company, and Mr. Storrow and Mr. Allen, partners of Lee, Higginson & Company of Boston, who represented the first preferred stockholders.

X Q. 847. What was the result of that conference?

A. Mr. Storrow was unwilling to agree to the suggestions which had been tentatively agreed upon between the representatives of the International Shoe Company and the McElwain Company, on the ground that it did not adequately compensate the first preferred stockholders. I advised Mr. Storrow that it was essential that he agree, because in addition to the financial condition of the company, with which he was familiar, the management of the company was on the edge of a breakdown; Mr. McElwain had already broken down two days before. The first vice-president of the company had broken down two months before; the treasurer of the company had given up his major responsibilities eight months before, and the second vice-president of the company was on the edge of a breakdown, and the company would disintegrate and the management would disintegrate physically unless the situation was saved, at once. Mr. Storrow then agreed. A contract was drawn and signed.

X Q. 848. In that contract was any definite amount of stock agreed to be sold to the International Shoe Company?

A. In that contract Mr. McElwain and I undertook to [fol. 297] secure and deliver and sell all of the outstanding capital stock of the W. H. McElwain Company.

X Q. 849. Did you also undertake to guarantee certain figures in the interim balance sheet of April 30th, which was used as a basis for the trade?

A. In a separate agreement we undertook to do that.

X Q. 850. On May 11, 1921, about what percentage of capacity were the McElwain factories operating?

A. About 28 percent at that time.

X Q. 851. For how long had they been operating at or about 28 percent, or less?

A. They had been operating at very low capacity since the previous October, the operations running down to about 10 percent and varying from 10 to 30 percent.

X Q. 852. I hand you two sheets of paper and ask you to identify them and state what they are.

A. This is a table and a chart showing the total production of all McElwain factories by months from December 1920 up to date, with the percentage of production each month, and from December, 1922, it shows the percentage of the production taken by the International Shoe Company from those factories.

Mr. Blake: We offer those two photostatic sheets as Respondent's Exhibits Numbers 36 and 36-A.

Examiner Bennett: They will be received—consisting of two pages.

[Said documents were thereupon marked, for identification, "Respondent's Exhibit- No-. 36 and 36-A" and were received in evidence and are forwarded herewith.]

X Q. 853. Mr. King, I will ask you to explain the headings of the different columns there.

A. The column at the top of the sheet is the month. The next column below is the number of pairs of shoes produced in all of the McElwain factories during that month. The next column is capacity of those plants in pairs for that month. The next column is percentage of capacity to which the McElwain plants were operating that month. The following column is percentage of the shoes produced in the month which were shipped to and sold to Interna- [fol. 298] tional Shoe Company, and the final column is number of pairs in that month from the McElwain factories shipped to and sold to International Shoe Company.

X Q. 854. After the trade had been closed what did the International Shoe Company do with respect to the business of the W. H. McElwain Company?

A. I do not think I understand the question.

X Q. 855. What did it do with respect to increasing the production of the W. H. McElwain Company factories?

A. Directly after the trade was closed the International Shoe Company placed with the McElwain Company sub-

stantial orders for shoes to be made in the McElwain factories, and subsequent orders were placed from time to time, and have been placed ever since.

X Q. 856. What percentage of production has been taken by the International Shoe Company since the summer of 1921?

A. Something about 50 percent of the production of the McElwain factories has been taken since the summer of 1921 up to date; the percentage varying each month.

X Q. 857. In the exchange of stock into whose names were the McElwain stocks transferred?

A. In carrying out the exchange the McElwain stock was first transferred to the name of J. F. McElwain and Stanley King and the stock coming in in 1922 was transferred to the name of Stanley King.

X Q. 858. Who voted those stocks in subsequent stockholders' meetings of the W. H. McElwain Company?

A. I did.

X Q. 859. Were you ever given any instructions by anyone from the International Shoe Company as to how you should vote those stocks?

A. No, except a general instruction at the beginning to vote them in accordance with my judgment.

X Q. 860. Were any officers or directors of the W. H. McElwain Company ever elected as directors of the International Shoe Company?

A. No.

X Q. 861. Were any officers or directors of the International Shoe Company ever elected as directors or officers of the W. H. McElwain Company?

[fol. 299] A. Only on one occasion in about February, 1922, Mr. Rand was elected president and director of W. H. McElwain Company to succeed Mr. McElwain, who resigned.

X Q. 862. At whose suggestion was he elected president of the W. H. McElwain Company?

A. At my suggestion. Mr. Rand suggested that I be elected and I declined and asked him to accept it.

X Q. 863. Were the companies from that time forward operated independently of each other? How were the accounts kept?

A. Their accounts were handled independently. The companies were operated as separate corporations with

close co-operation between the respective departments east and west, but at no time could the McElwain Company continue to operate if the International Shoe Company had withdrawn its financial support in cash advances that it made, nor could the McElwain Company have operated even steadily if the International Shoe Company had withdrawn its orders from the McElwain factories.

X Q. 864. Now, as to the sales branches at Columbus, Chicago, Kansas City, San Francisco, New York and Boston, was a careful analysis of their operations made within a few months after acquisition?

A. Yes, it was.

X Q. 865. What did that analysis disclose as to these branches?

A. It disclosed that Columbus, Kansas City, Chicago and San Francisco had so small a volume of business and so serious expenses that we could not hope to operate them and break even. A substantial continuing operating loss was indicated. As a result we attempted to sell and could not find a customer for Chicago, Columbus and San Francisco, and we closed the branches and liquidated the merchandise.

By Examiner Bennett:

Q. 866. About when was that, Mr. King?

A. Chicago was closed in the summer of 1921. We tried to liquidate the merchandise at Columbus so far as possible, and that was finally closed April 1, 1922, yet the decision was made to close long before that, and we were shipping out the merchandise as fast as we could sell it and shipping in no new merchandise. San Francisco we closed about April 1, 1922, having pursued the same policy [fol. 300] as at Columbus, shipping in no merchandise for a number of months and liquidating the merchandise as fast as possible. We sold the Kansas City business to the Bartons, who had been managing it, in June, 1921, Mr. Barton coming in and making a proposition for that business at his instance. We sold the interest in the Fisher Company in New York to the Fishers in the fall of 1921, the Fishers making us a proposal for the purchase of our interest in that business.

By Mr. Blake:

X Q. 867. Were these sales branches closed at the instance of the International Shoe Company, or any of its executives, or was this done on the recommendation and suggestion of the executives of the W. H. McElwain Company?

A. It was done under the recommendation of the executives of the W. H. McElwain Company, which was agreed to by the officers of the International Shoe Company.

X Q. 868. On November 30th, 1921, or prior thereto, was a careful inventory of the company taken?

A. An inventory of the W. H. McElwain Company was taken as of November 30th and a balance sheet made up, showing the results of the company at that time—the position of the company at that time.

X Q. 869. By whom was the inventory taken?

A. By the McElwain organization, who were taking the previous inventories.

X Q. 870. Did they also handle the figures which entered into the balance sheet?

A. They did.

X Q. 871. What was the showing on that balance sheet as compared with the balance sheet of April 30th preceding, just in round figures?

A. The showing was approximately five million dollars worse than April 30th.

X Q. 872. I think you stated in your direct examination yesterday that in January 1922 Mr. J. F. McElwain, the president of the W. H. McElwain Company, tendered his resignation; what business did Mr. McElwain go in?

A. He organized the J. F. McElwain Company and started the manufacture and sale of shoes in Nashua, New Hampshire.

X Q. 873. Is that a city where one of the old W. H. McElwain factories is located?

A. Yes; and he is manufacturing a line of shoes similar [fol. 301] to a line we make in one of our factories in the east.

X Q. 874. You also stated that Mr. Charles J. Prescott and E. L. Prescott both resigned from the W. H. McElwain Company; what business did these gentlemen go into?

A. Mr. Charles J. Prescott went into the tanning business with Proctor, Ellison Company of Boston. Mr. E. L. Prescott is associated with several companies, one of them the Allen Squire Shoe Company of Massachusetts, and one of them which makes a line of shoes competitive with the International Shoe Company in the west, and one of them, the McElwain, Home & Tarlbott Company of Hudson, Massachusetts, which makes a line of shoes similar to what we make in our eastern factories.

X Q. 875. What business did Mr. K. L. Barton go into after he tendered his resignation to the W. H. McElwain Company?

A. First into the operation of the Barton business in Kansas City, which he had purchased from us, and when that went into liquidation he became associated with the Foote, Schultz Shoe Company, manufacturers of shoes, in St. Paul.

X Q. 876. What business did Mr. Irving L. Fisher, former director of the McElwain Company, go into after he offered his resignation to the McElwain Company?

A. He became president of the Nathaniel Fisher Company, wholesale distributors of shoes in New York, who are competing with our New York and Boston branches.

X Q. 877. What business did Mr. Daniel Morse go into when his resignation was tendered to and accepted by W. H. McElwain Company, Mr. King?

A. Mr. Morse, I think, is president or chairman of the Morse & Burt Shoe Company of Brooklyn, manufacturers of women's shoes.

X Q. 878. What business did the following directors of W. H. McElwain Company go into after their resignations were tendered and accepted: Allen N. Bennett, Frances P. Murphy, S. M. Patterson?

A. Patterson and Murphy became partners with Mr. McElwain in the J. F. McElwain Company of Nashua. [fol. 302] Mr. Bennett became a partner in the Heitman Leather Company, tanners, of West Winfield, New York.

X Q. 879. What business is Mr. A. G. Matless in now?

A. He is now with the Commonwealth Shoe & Leather Company of Rockland, Massachusetts, makers of men's shoes.

X Q. 880. Mr. King, did the executives or officers of the International Shoe Company at any time in the negotiations with you or the other executives of the W. H. McElwain Company make any express or implied provision or suggestion that there should be a contract that would restrict the officers or managers of the W. H. McElwain Company from engaging in business of shoe manufacturing, anywhere, at any time?

A. They did not. It was never suggested.

X Q. 881. In your direct examination you testified that the first suggestion from Bennett, Limited, as to its desire to buy the stock of the W. H. McElwain Company came through Mr. Charles J. Prescott?

A. I did.

X Q. 882. Mr. Prescott was former senior vice-president of the W. H. McElwain Company, was he not?

A. He was.

X Q. 883. Did he at the time of this suggestion have any connection with the W. H. McElwain Company?

A. No.

X Q. 884. Did he have any connection at that time with the International Shoe Company?

A. No.

X Q. 885. Was he a stockholder in the International Shoe Company?

A. I think not.

X Q. 886. Had you had any previous discussion with Mr. Prescott concerning this stock of the W. H. McElwain Company and its sale?

A. I had not.

X Q. 887. When the officers of the W. H. McElwain Company resigned at your suggestion, I think you testified that Mr. Clifford P. Warren was elected president; C. S. Howland, treasurer; C. P. Warren, C. S. Howland, Charles J. Prescott, E. L. Prescott and F. B. Smith, directors. Were all of these parties formerly connected with the W. H. McElwain Company?

A. Yes.

X Q. 888. Had they all left the W. H. McElwain Company a year or more previously?

A. I think so, except that Mr. C. P. Warren, who had [fol. 303] left the McElwain Company a year and a half previously, was still acting as attorney for the company.

X Q. 889. Were any of them at the time of their election as directors of the W. H. McElwain Company stockholders in the International Shoe Company?

A. I think not.

X Q. 890. You testified in your direct examination that, after Mr. Blake arrived in Boston, on or about June 13, 1923, and reported his conference with Mr. Rand and Mr. Johnson concerning the disposition to be made of the McElwain Company stock, you called Mr. Rand over the long-distance telephone and had a conversation with him?

A. Yes.

X Q. 891. In that conversation you said that he gave you carte blanche to go ahead; that was the net result of that conversation?

A. He gave me carte blanche to go ahead with the understanding that you agreed with me in the steps I was suggesting.

X Q. 892. You have used the pronoun "you"; you mean by that Mr. Blake?

A. Mr. R. E. Blake.

X Q. 893. Did you understand that you were to go ahead regardless of what Mr. Johnson and Mr. Rand might have theretofore had in their minds as to the manner of handling this thing?

A. I did.

X Q. 894. Did you make some statement to Mr. Rand in that conversation to the effect that when a man had a doctor he should follow the doctor's advice?

A. I did.

X Q. 895. What did you just mean by that statement?

A. I meant we were dealing with a situation which I felt familiar with as a business man and I felt you were familiar with as a lawyer, and that it was advisable for Mr. Rand to follow our advice on that situation.

X Q. 896. In your direct examination you also testified that in your arrangement with Bennett, Limited, there was no written agreement as to the other stocks which were to be surrendered to the W. H. McElwain Company for cancellation and extinguishment. I will ask you if according

to the balance sheets and statements those stocks were not clearly worthless?

A. Yes, they were.

[fol. 304] By Mr. Brindley:

Q. 897. What were these stocks that were clearly worthless?

A. My answer refers to common and second preferred.

By Mr. Blake:

X Q. 898. After you had come to an agreement with Bennett, Limited, on June 15, 1923, you say that you had the shares transferred on the books of the Old Colony Trust Company, which was the transfer agent for the W. H. McElwain Company?

A. Yes.

X Q. 899. Transfered to the name of Bennett, Limited?

A. To the name of Bennett, Limited.

X Q. 900. Subsequent to that time did the Bennett, Limited, exercise any act of ownership over those shares of stock?

A. Yes.

X Q. 901. What act of ownership did it exercise?

A. Possession of the stock and voting of the stock and entire disposition of the certificates.

X Q. 902. Where are those certificates now?

A. So far as I know, they are in the possession of Bennett, Limited.

X Q. 903. Have you ever had those certificates in your possession since delivery to Bennett, Limited?

A. I have not.

X Q. 904. You know they were delivered to Bennett, Limited?

A. I do. I never have seen the certificates since then.

X Q. 905. Did you at any time prior to the stockholders' meeting of the W. H. McElwain Company on June 20, 1923, make any effort to sell the assets of the W. H. McElwain Company?

A. I did.

X Q. 906. About what time did you make these efforts?

A. On June 8th and again on June 12th?

X Q. 907. Then that was prior to your sale of the securities to Bennett, Limited, on June 15th?

A. It was.

X Q. 908. To whom did you make these efforts to sell the properties of the W. H. McElwain Company?

A. I attempted to sell them to Lee, Higginson & Company, bankers, of Boston, who were more familiar with the affairs of McElwain Company than any other bankers. I attempted to sell them to Eben H. Ellison, who is the largest independent tanner so far as I know, and he has, I [fol. 305] believe, the largest available financial resources of anybody in the tanning business.

X Q. 909. Were these firms financially able to have bought the assets of W. H. McElwain Company if the proposition had appealed to them?

A. Lee, Higginson & Company were financially able to buy the assets if the property appealed to them. I believe Mr. Ellison could have handled the transaction financially, but I do not know definitely except by his reputation. I also attempted to reach Mr. Wendell Endicott of Boston, who had six months before retired from Endicott, Johnson Company, and who was so far as I knew the only man with experience in the shoe business financially able to handle a transaction of this size. I was unable to reach Mr. Endicott, as his office advised me that he was in Canada on a holiday in the woods. Neither Lee, Higginson & Company nor Mr. Ellison would consider the proposition.

X Q. 910. At the time of the sale of the stock to Bennett, Limited, did any of the officers or stockholders of Bennett, Limited, have any connection with the International Shoe Company?

A. None of the officers of Bennett, Limited, had any connection with the International Shoe Company. I have never seen and do not know the stockholders' list of Bennett, Limited.

X Q. 911. At that time did any officers of the International Shoe Company own any stock or were they connected with the directorate of Bennett, Limited?

A. I think none of the officers of the International Shoe Company had ever had any stock or had any connection with Bennett, Limited.

X Q. 912. At the time you sold this stock to Bennett, Limited, in your dealings with Mr. Pierre Bonin did you make any collateral agreement with Mr. Bonin, or with any other officer or anyone connected with Bennett, Limited, that the International Shoe Company would repurchase the assets of the W. H. McElwain Company?

A. I did not.

X Q. 913. Wasn't Bennett, Limited, after its purchase of those stocks, absolutely free to sell any and all of the stocks?

A. It was.

X Q. 914. Was it not free to operate the factories of the McElwain Company, if it so saw fit?

A. It was.

[fol. 306] X Q. 915. Or to sell the assets of the W. H. McElwain Company at any time to any customer that it saw fit?

A. It was.

X Q. 916. Did you make any contract with them, or any agreement with them, that would have restricted them in the exercise of any of those prerogatives that went with the ownership of the stock?

A. I did not.

X Q. 917. Is it not a fact that shortly after the sale of this stock to the Bennett, Limited, publication of the fact that Bennett, Limited, had acquired this stock was made in the newspapers?

A. It was.

X Q. 918. Is it not also a fact that shortly after the acceptance of the offer of the International Shoe Company for the McElwain assets at the stockholders' meeting of the W. H. McElwain Company held on June 20, 1923, publication was also made of the fact that the International Shoe Company had bought the assets of the W. H. McElwain Company?

A. It was.

X Q. 919. Is it not a fact also that shortly after the purchase of the assets you went to Washington with Mr. Blake and frankly stated to one of the commissioners of the Federal Trade Commission just what had taken place?

A. I went to Washington with Mr. Blake on June 26, 1923, and stated the facts of the sale of the McElwain stock

to International Shoe Company in 1921 and the conditions surrounding that sale—the sale of the International Shoe Company to Bennett, Limited, in 1923, and the purchase of the assets by the International Shoe Company from W. H. McElwain Company in 1923, to a commissioner of the Federal Trade Commission, to the extent of about an hour and a half's statement, answering all questions that were asked me by the commissioner.

X Q. 920. Mr. King, do you know of anyone else in the country besides Lee, Higginson & Company, Eben H. Ellison, Wendell Endicott, that you could have sold the McElwain assets to at that time?

Mr. Brindley: I object to that on the ground that it is immaterial.

Examiner Bennett: I will sustain the objection.

[fol. 307] X Q. 921. Mr. King, have you within recent weeks or months made some effort to sell one of these former McElwain plants?

Mr. Brindley: We object to that; that hasn't a particle in the world to do with this inqury, about recent efforts he made to sell one of the McElwain patents.

Examiner Bennett: What is the relevancy of that?

[Discussion had, not reported by direction of examiner.]

Examiner Bennett: Objection sustained, as totally irrelevant, incompetent and immaterial, and having nothing whatever to do with the issues in this case as made in the pleadings.

Mr. Blake: Note an exception.

X Q. 922. Mr. King, you know the former officers of the W. H. McElwain Company rather intimately, do you not?

A. I do.

X Q. 923. Do you know their financial standing?

Mr. Brindley: What has that to do with this inquiry?

Mr. Blake: Make your objections, if you wish.

Mr. Brindley: I will object to that question, on the ground that it is perfectly illegal, incompetent and immaterial.

Examiner Bennett: Will you indicate what the object of the testimony is?

Mr. Blake: That is preparing the ground for my next question, Mr. Examiner.

Examiner Bennett: What is the object of the next question. I want to get something, to see whether you are leading up to competent testimony, if you care to reveal it.

Mr. Blake: I suggest that Colonel Brindley reserve all right to object to that question until I have asked the next question.

Mr. Brindley: We will take that as we come to it. I do not see any relevancy whatever in this question. We are not interested in the financial standing of these gentlemen and it has nothing to do with this inquiry.

Examiner Bennett: I shall sustain the objection, unless there is some showing made to indicate the relevancy of the offer.

X Q. 924. Mr. King, are the former officers of the W. H. McElwain Company financially able to raise the necessary funds to purchase the former assets of the W. H. McElwain Company?

[fol. 308] Mr. Brindley: Objected to, on the same grounds assigned to the preceding one.

Examiner Bennett: I do not get the relevancy of it. I do not want to cut it out if the counsel shows there is any connection between that and the inquiry. There is no allegation here that they tried, or anything of that sort, so far as I can see. I will sustan that objection as irrelevant, incompetent and immaterial and not bearing upon the issues in the proceeding.

Mr. Blake: Note an exception.

X Q. 925. Mr. King, do you know of any action that could have been taken by the International Shoe Company in 1923 to comply with the complaint of the Federal Trade Commission that was not taken?

Mr. Brindley: We object to that question. That is a conclusion for the commission to reach and not Mr. King.

Examiner Bennett: Objection sustained, irrelevant, incompetent and immaterial, the witness not qualified to answer.

Mr. Blake: Note an exception.

X Q. 926. Mr. King, what were the principal causes of the losses of the W. H. McElwain Company between May 1920 and April 30, 1921?

A. The principal causes of the losses were radical decline in commodity prices, causing heavy loss in merchandise inventory and in forward commitments on merchandise, and heavy losses in the collection of receivables from merchants in this country and from merchants abroad, these losses of receivables being very much in excess of the normal credit losses which had been sustained by the company in the previous years.

X Q. 927. What were the principal causes of the McElwain losses between April 30, 1921 and November 30, 1921?

A. The principal cause of the losses in that period on the books of the W. H. McElwain Company was the fact that merchandise and receivables were overvalued in the statement of April 30th, 1921, and the sale of the merchandise and the collection of the receivables disclosed that the condition of the company at April 30th had been overstated to the extent of several million dollars.

X Q. 928. Mr. King, I hand you a pamphlet and ask you [fol. 309] if you can identify that?

A. This is a report of the Federal Trade Commission on shoe and leather cost and prices, dated June 10th, 1921.

X Q. 929. Turn to page 147 in that report and state what it shows with respect to the number of shoe manufacturers in the United States with a capacity of over 3,000,000 pairs of shoes per year.

A. This report states that in the shoe industry in 1919 there were twelve companies whose production exceeded 3,000,000 pairs.

X Q. 930. Who or what are the six largest shoe manufacturing organizations in the United States other than the International Shoe Company?

Mr. Brindley: Just qualify him in one respect before he answers that. Do you know which are the six largest?

The Witness: Not today; no.

By Mr. Blake:

X Q. 931. Do you know the six largest shoe manufacturers other than the International Shoe Company in 1921?

A. I believe I know the five largest next to International in 1921.

X Q. 932. What are they?

A. Endicott-Johnson Shoe Company; George E. Keith Company; Brown Shoe Company; Creddock-Terry Shoe Company and W. H. McElwain Company.

X Q. 933. Were Endicott-Johnson Company competitors of the McElwain Company in 1921?

A. Yes, sir.

X Q. 934. Was the Brown Shoe Company a competitor of the McElwain Company in 1921?

A. Yes.

X Q. 935. Were George E. Keith & Company competitors of the McElwain Company in 1921?

A. No.

X Q. 936. Was the Creddock-Terry Company a competitor of the McElwain Company in 1921?

A. We did not so regard them.

X Q. 937. You have named a number of officers and directors of the W. H. McElwain Company who tendered their resignation and retired from the W. H. McElwain Company; were any of these resignations requested by the International Shoe Company?

A. So far as I know, none of the resignations were requested by the International Shoe Company until the resig- [fol. 310] nations which took place in the end of May and early June, 1923, which were requested by me.

X Q. 938. In your direct testimony you stated that your salary prior to June 1, 1923, had been paid by International Shoe Company's check, but had been charged to W. H. McElwain Company's account?

A. Yes.

X Q. 939. Is it not a fact that the International Shoe Company at the same time was also paying many other items for the W. H. McElwain Company and charging them to the W. H. McElwain Company's account?

A. That is true.

X Q. 940. It was advancng money constantly in this period subsequent to the acquisition?

A. It was.

X Q. 941. In connection with the waivers which were furnished by the principal creditors of the W. H. McElwain

Company in June 1923, when the International Shoe Company purchased its assets—these waivers being under the bulk sales law—did you not satisfy yourself prior to the closing of that transacation that these waivers had been signed or would be forthcoming?

A. Yes, I did.

X Q. 942. The form of the waiver was prepared and approved by the attorney for the International Shoe Company, was it not?

A. It was.

X Q. 943. You were asked on direct examination as to the deeds for the real estate of the W. H. McElwain Company, whether or not these deeds had been recorded or put of record; I will ask you to state now why thse deeds were not recorded.

A. I recommended that the deeds should not be recorded for the time being because of the local tax situation in some of the New Hampshire towns where our factories were located.

X Q. 944. Was there any other reason why they were not recorded?

A. None that I know of.

X Q. 945. All of those deeds had the proper amounts of United States documentary stamps, did they not?

A. I believe they did.

X Q. 946. And those stamps amounted to how much?

A. The total of those revenue stamps amounted to $1,927.

[fol. 311] X Q. 947. Do you know about how much it would have cost to have recorded these instruments or these deeds?

A. I do not.

X Q. 948. At one point in your direct examination, in response to a question from the attorney for the commission as to whether you knew whether or not the check of Bennett, Limited, for $4,061,094.14 was good or bad, you replied that you did not know whether it was good or bad; I will ask you if you did not know that Bennett, Limited, were good for that check and that that check could be enforced?

A. I knew Bennett, Limited, had always maintained a good business reputation and I regarded the check as an enforceable check against the company which made it.

X Q. 949. This four million dollar note which was executed by the International Shoe Company and credited to its account at the National Bank of Commerce of New York was what is generally known in business circles as a one-day note, was it not?

A. That is my understanding.

X Q. 950. What were the advantages of using that form of note, Mr. King?

A. The two advantages that I know of are that it does not require a revenue stamp and does not carry interest.

X Q. 951. On a note of that size the interest would be a matter of some consideration, would it not?

A. It would.

X Q. 952. The attorney for the commission in his direct examination at a number of points asked you if the difference between the check given by Bennett, Limited, for the stock of the W. H. McElwain Company, $4,061,094.14, and the consideration paid by the International Shoe Company to the W. H. McElwain Company for its assets, $4,063,125.89, or a difference of $2,031 and some odd cents, if this difference was not the actual amount which the International Shoe Company paid for the assets of the W. H. McElwain Company when it acquired them; you stated also I think that at that time the W. H. McElwain Company owed the International Shoe Company obligations of over $11,000,000; isn't that true?

A. I did.

X Q. 953. This contract or offer which was accepted by W. H. McElwain Company agreed to the extinguishment of that obligation of over $11,000,000, did it not?

A. It did.

X Q. 954. And in addition to that didn't the Interna- [fol. 312] tional Company give the W. H. McElwain Company its check for $4,063,125.89?

A. It did.

X Q. 955. Then the true consideration for the assets of W. H. McElwain Company was in fact about $15,000,000 or more; is that not a fact?

A. Yes.

X Q. 956. At several points in the direct examination concerning the Bennett, Limited, transaction the attorney for the commission has indicated that there was an ele-

ment of absurdity in the Bennett, Limited, buying the stock of the W. H. McElwain Company for $4,061,094.

Mr. Bindley: Are you asking the witness a question or testifying?

Mr. Blake: I am establishing my connection. I am going to ask him a question.

X Q. 957. He pointed out that the W. H. McElwain Company did not have sufficient assets to meet all of its obligations and pay all of its capital stock liabilities; now, you handled this transaction with Bennett, Limited, practically single-handed, did you not?

A. From a business end I did, with the advice of Mr. Blake on the legal end.

X Q. 958. You sold to the Bennett, Limited, practically all of the capital stock of the W. H. McElwain Company, That is, all of it that had any value did you not? That is, all of it that had any value?

A. Yes.

X Q. 959. And that which had no value you agreed with them should be surrendered for cancellation and extinguishment?

A. Yes.

X Q. 960. You sold all of this stock for a fixed amount totaling something over four million dollars, did you not?

A. I did.

X Q. 961. And you stated yesterday, I believe, that the gross assets of the McElwain Company were approximately fifteen million dollars and they owed the International Shoe Company something over eleven million dollars?

A. At that time?

X Q. 962. At that time.

A. I think I testified yesterday that the gross assets were about thirteen and a half million dollars and they owned the International about eleven million dollars; that is my best recollection of my testimony.

[fol. 313] X Q. 963. Now, Mr. King, was there not one other occasion when you sold all or practi-ally all of the stock of the W. H. McElwain Company?

A. There was. I contracted to sell, and sold, practically all of the capital stock of W. H. McElwain Company in 1921.

X Q. 964. To whom did you sell the stock?

A. We sold McElwain—with Mr. McElwain I sold the stock to the International Shoe Company.

X Q. 965. Is it not true that you handled the greater part, that is, the critical parts, of the negotiations for that sale practically alone?

A. I think I handled the critical part of the negotiations practically alone.

X Q. 966. You sold this same stock to the International Shoe Company in 1921 for about nine and a half million dollars?

A. I did.

X Q. 967. And you sold it to them at a price which was more than double its actual value, did you not?

A. Yes.

X Q. 968. You sold this stock to the International Shoe Company, almost the entire capital stock of the W. H. McElwain Company, in 1921 for approximately nine and a half million dollars, when the actual net values behind that stock were less than five million dollars?

A. I believe so.

X Q. 969. As the matter eventually worked out, you sold that stock to the International Shoe Company for approximately five or six million dollars more than it was worth, did you not?

A. As it appeared subsequently.

X Q. 970. At that time, in 1921, you were working in the interest of the W. H. McElwain Company, were you not?

A. I was.

X Q. 971. And you effected a very advantageous sale for them?

A. The sale was advantageous for them.

X Q. 972. In June 1923 you were employed by the International Shoe Company, were you not?

A. I was.

X Q. 973. And you effected for the International Shoe Company an advantageous sale of this same stock to the Bennett, Limited, did you not?

A. I did.

[fol. 314] Mr. Blake: We offer in evidence 44 sheets indicating sales of W. H. McElwain Company for the year ending May 31, 1921, in dozens.

X Q. 974. Please describe them a little more fully.

A. I testify these are 44 sheets containing a statistical record of the sales of shoes produced by W. H. McElwain Company and sold during the fiscal year ending May 31, 1921, as prepared for the chief counsel of the Federal Trade Commission and submitted to him by W. H. McElwain Company by covering letter dated December 29, 1922, and as identified by me in my testimony of yesterday.

Examiner Bennett: They will be received as the Respondent's Exhibit Number 37.

[Said documents were thereupon marked, for identification, "Respondent's Exhibit 37, Witness King", were received in evidence and are forwarded herewith.]

Examiner Bennett: We will adjourn at this point until tomorrow morning at 9.30 o'clock.

[Thereupon, at 5.30 o'clock p. m. May 30, 1924, an adjournment was had until 9.30 o'clock a. m. May 31, 1924.]

St. Louis, Mo., May 31, 1924—9.30 o'clock a. m.

[Met pursuant to adjournment.]

Redirect examination.

By Mr. Brindley:

Q. 975. Mr. King, after the special meeting of the stockholders of the W. H. McElwain Company on June 20th, 1923, did you send to Mr. Rand a telegram in regard to the action at that meeting?

A. I did.

Q. 976. And that was the telegram which you heretofore read into the record?

A. It was.

Q. 977. Did you also, on the same day, write him a letter in regard to the meeting?

A. Refreshing my recollection, I find that I wrote Mr. Rand a letter on June 20th.

Q. 978. Is that the same day on which you sent the telegram?

A. Yes.

Q. 979. Was it subsequent to the sending of the telegram?

A. I cannot tell whether it was subsequent or contem- [fol. 315] poraneous. The letter does not refer to the telegram.

Q. 980. Is the document I hand you a correct copy of the letter you wrote to Mr. Rand on June 20th, 1923?

A. Yes, it is.

Mr. Brindley: We offer that copy in evidence right at this place, Mr. Examiner, as the Commission's Exhibit Number 8.

Examiner Bennett: It is received.

[Said letter was thereupon marked, for identification, "Commission's Exhibit No. 8, Witness King", was received in evidence and is forwarded herewith.]

Q. 981. In the letter of June 20th to Mr. Rand you referred to negotiations with Mr. Wigglesworth's lawyer?

A. I did.

Q. 982. Who was Mr. Wigglesworth?

A. Mr. Wigglesworth was the owner of fifty shares of common stock of the W. H. McElwain Company.

Q. 983. Is he the one you heretofore referred to with reference to your conference with a lawyer?

A. It is his lawyer I have heretofore referred to.

Q. 984. Is he the one that you also mentioned that was subsequently satisfied by the purchase of his stock?

A. He is.

Q. 985. And was he paid out of the difference between the amount of the two checks?

A. No.

Q. 986. How was he paid?

A. Paid for by the International Shoe Company.

Q. 987. Out of the——

A. Out of the funds of the company on deposit in one of the Boston banks.

Q. 988. That followed the transaction regarding the purchase of the assets from McElwain Company by the International Shoe Company?

A. It did.

Q. 989. Have you in your files a letter, or a copy of a letter, which Mr. Rand wrote you enclosing the four million dollar note and the check payable to the order of W. H. McElwain Company?

A. Mr. Blake has that.

Mr. Blake: I now produce it. Here it is, Mr. Brindley.

A. This is a copy of that letter.

[fol. 316] Q. 990. That letter, as heretofore stated, is dated June 18th?

A. Yes.

Q. 991. And that is the one which sent you the four million dollar note and the check mentioned therein?

A. It is.

Q. 992. This four million dollar note and the check to W. H. McElwain Company of June 20, 1923, were sent to you by Mr. Rand at your request?

A. At my request or Mr. Blake's request.

Q. 993. Do you recall how you communicated with Mr. Rand in regard to this note and check, whether by 'phone, telegram or letter?

A. My recollection would have been 'phone, but I notice Mr. Rand's letter to me says, "Your letter only reached us this morning." I have not seen here a copy of that letter. Have we a copy of that in the files?

Mr. Blake: I have never seen it and I do not know what letter that refers to.

Q. 994. I believe you stated your best recollection is that it was a communication by 'phone?

A. That would have been my best recollection until I read this letter.

Q. 995. The letter from Mr. Rand to you?

A. Yes.

Q. 996. The note, as heretofore testified, was undated when sent to you and you filled in the date on the 21st?

A. Yes, sir.

Q. 997. The check itself is dated June 20, 1923?

A. Yes.

Q. 998. And that was enclosed in a letter dated June 18?

A. Yes.

Q. 999. Your best recollection is you did have telephone communication with Mr. Rand in regard to the meeting of June 20th, is it?

A. I would have said so until I read this letter, which would indicate to me that Mr. Rand had apparently received a letter from me, but the files do not indicate it, or at least it has not been found. I do know I communicated with Mr. Rand in some way.

Q. 1000. What I am trying to get at is this: This four million dollar note and the check to McElwain Company of June 21, 1924, were sent to you by Mr. Rand at your request?

A. Yes; that is true.

Q. 1001. When you requested him to send this note and check, was that the time you had the conversation with [fol. 317] him about a man taking his doctor's medicine?

A. No, it was not that time; it was a subsequent communication.

Q. 1002. In a subsequent communication?

A. Yes.

Q. 1003. Telephone communication, you mean?

A. Telephonic or letter; I am not clear as to that.

Q. 1004. When you disclosed certain of the negotiations to Mr. Rand he demurred a little bit and you told him when he had a doctor he should take his medicine?

A. This was subsequent to that.

Q. 1005. But it was in such a conversation you told him that he had a doctor and must take the medicine?

A. No; I never stated it in that way.

Q. 1006. How did you state it?

A. I told him I thought he should take his doctor's advice.

Q. 1007. He was not very enthusiastic about taking that dose that the doctor offered him, was he?

A. He agreed to it right away.

Q. 1008. He did not take it like a sugar-coated pill, did he?

A. I do not know.

Q. 1009. Was one of your arguments to bring him around that when he had a doctor he must take his medicine?

A. No; that is a misstatement of what I have testified to several times.

Q. 1010. You have testified that you told him that he had a doctor, that he should take his medicine, didn't you?

A. I have tried to testify I said to him when he had a doctor he should take his advice.

Q. 1011. His advice?

A. Yes, and you have persistently misquoted me, if I might say so.

Q. 1012. You did not heretofore use the term "medicine"?

A. No, I did not.

Q. 1013. You did not request Mr. Rand, at any time, to send you any documents in regard to this transaction except the four million dollar note and the check for $4,063,-125.89?

A. I think that is all I requested.

[fol. 318] Q. 1014. Do you recall what date it was you asked Mr. Rand to send that note and check?

A. No, I do not.

Q. 1015. It was received by you, as you heretofore stated, on June 20th, 1923?

A. Yes.

Q. 1016. And that is the date of the special stockholders' meeting?

A. Yes.

Q. 1017. In Boston?

A. Yes.

Q. 1018. And you had that note and check with you at that meeting?

A. I had them in my possession. I do not know whether I had them in my pocket at the meeting or not.

Q. 1019. You had them in your possession that date?

A. I cannot testify whether I received them on the morning of June 20th or afternoon of June 20th; I do not know.

Q. 1020. And the note for $4,000,000 and the check to W. H. McElwain Company were the only two documents of the kind that you had?

A. That is my best recollection.

Q. 1021. When did you ask Mr. Rand to send to you this form of a note?

A. I sent that form of note to Mr. Rand.

Q. 1022. When did you send it?

A. I will change that testimony. I either sent it to Mr. Rand or asked Mr. Blake to send it to Mr. Rand.

Q. 1023. Where did you get that?

A. I got that from the National Bank of Commerce.

Q. 1024. Of New York?

A. In New York.

Q. 1025. You had been to New York and arranged the details of this transaction with the National Bank of Commerce?

A. Yes; I went to New York and arranged for that loan.

Q. 1026. You did that, of course, prior to the time you sent it to Mr. Rand?

A. Yes, sir.

Q. 1927. Which of course, necessarily means it was prior to June 18th?

A. That is right.

Q. 1028. Do you know what these initials are on the four million dollar note; can you translate them?

A. I think I can translate one initial, but I am not sure.

Q. 1029. Do so, please, and tell us what it means.

[fol. 319] A. I think "S. E. W." are the initials of the president of the National Bank of Commerce.

Q. 1030. Can you give his name?

A. Stephenson Ward—Stephenson E. Ward, I think. He is president of the National Bank of Commerce. Those are his initials, but I do not identify them except they are similar initials.

Q. 1031. Can you translate the other initials?

A. No, I cannot.

Q. 1032. The four million dollar note is stamped on the back as paid, isn't it?

A. It is.

Q. 1033. Read that into the record, that stamp.

A. "National Bank of Commerce, New York, paid June 21, 1923, Second Teller."

Q. 1034. You heard Mr. Jackson Johnson testify in this proceeding a day or two ago?

A. I did.

Q. 1935. Do you recall when he took the 1921 catalogue of the International Shoe Company and designated therein the types and styles of shoes that the International Shoe

Company sold similar to those sold and made by the McElwain Company?

A. I do.

Q. 1036. Can you take the same catalogue and designate those styles to me?

A. Probably not, but I can try. I do not think I can do it accurately at all. I am not familiar with the catalogues here and with their line.

Q. 1037. When you refer in your testimony to Mr. Blake, you mean Mr. R. E. Blake, attorney for the International Shoe Company?

A. I do.

Q. 1038. He is the one you heretofore testified about being connected with you in all of those transactions?

A. Most of them.

Q. 1039. I mean only in those which you did say he was connected?

A. That is right.

Q. 1040. Is this document I hand you a correct copy of the four million dollar note of the International Shoe Company to the National Bank of Commerce?

A. It appears to be a correct copy of the note, without the initials to which I have testified, without the word "Paid," which is written across the original note, and without the rubber stamp on the back which I have read into the record, and without certain initials, apparently, on the back which I do not recognize.

[fol. 320] Q. 1041. So far as the words go, it is a correct copy?

A. It appears to be a correct copy; yes.

Mr. Brindley: We offer in evidence the copy of the four million dollar note dated June 21, 1923, as Commission's Exhibit Number 9.

Examiner Bennett: It will received.

[Said copy of note was thereupon marked, for identification, "Commission's Exhibit No. 9, Witness King," was received in evidence and is forwarded herewith.]

Mr. Brindley: We also offer in evidence, as Commission's Exhibit Number 10, a copy of the letter of June 18, 1923, of Mr. Rand as testified to and identified by him in his testimony.

Examiner Bennett: It will be received.

[Said letter was thereupon marked, for identification, "Commission's Exhibit No. 10," was received in evidence and is forwarded herewith.]

Q. 1042. Who were the officers or agents of the National Bank of Commerce with whom you negotiated the transaction?

A. Well, I negotiated the loan with Mr. Ward, the president of the bank.

Q. 1043. Give his name in full, if you can.

A. My recollection is his name is Stephenson E. Ward. He called into conference with him one or two other officers of the bank who I do not recall. I think one of them may have been Mr. Robinsky, but I am not certain. I negotiated the loan with Mr. Ward.

Q. 1044. What time was it when you negotiated the loan?

A. What time?

Q. 1045. Yes, what date?

A. June 14th.

Q. 1046. 1923?

A. 1923.

Q. 1047. And subsequently to negotiating the loan on June 14th, 1923, you with Mr. Blake, or both, communicated with Mr. Rand in regard to the execution of the note and the check which are mentioned by him in his letter to you of June 18th?

A. Yes.

Q. 1048. Did you receive a telegram from Mr. Rand in regard to the matter?

A. I did.

Q. 1049. What is the date of that telegram?

A. June 18th, 1923.

Q. 1050. Have you a copy of that telegram with you?

A. I have.

[fol. 321] Q. 1051. Is that the copy you have there?

A. It is.

Mr. Brindley: We offer the copy of this telegram of June 18th, 1923, as Commission's Exhibit Number 11.

Examiner Bennett: It will be received as Commission's Exhibit Number 11.

[Said telegram was thereupon marked, for identification, "Commission's Exhibit No. 11, Witness King," was received in evidence and is forwarded herewith.]

Mr. Brindley: I believe that is all.

Recross-examination.

By Mr. Blake:

X Q. 1052. In your agreement with Bennett, Limited, did you not agree to deliver to them in addition to the stock that was delivered on June 15, 1923, the fifty shares of common stock which was still outstanding?

A. I have already testified that I agreed by collateral, verbal agreement to deliver that stock to them if I secured it; it was only on condition that I secured it.

X. Q. 1053. Then in your subsequent purchase from Mr. Wigglesworth and his attorney you did secure that stock?

A. I did.

X Q. 1054. Did that stock have any value other than the nuisance value which you have testified Mr. Wigglesworth's attorney put on it?

A. That is the only value I thought it had.

X Q. 1055. What did Mr. Wigglesworth's attorney mean by "nuisance value?" You understood what he meant?

A. He explained what he meant. He told me he meant the trouble and expense of litigation which he thought he could cause us.

X Q. 1056. Mr. King, you testified that on June 14th you arranged for this loan of four million dollars at the National Bank of Commerce; I will ask you if you did not realize at that time that if the McElwain stockholders accepted the offer of the International Shoe Company for its assets it would be necessary to have funds ready to pay for those assets?

A. I did, and the loan was arranged on that basis, that we could have the money if we wanted it.

X Q. 1057. And you did that as a preliminary step to expedite matters in connection with that trade which you hoped would go through?

[fol. 322] A. I did that as a preliminary step to expedite matters in case the offer of the International Shoe Company should be accepted.

X Q. 1058. Then when you testified that you negotiated the loan on June 14, 1923, you did not mean that you had actually closed a loan on that date, did you?

A. No; the loan was not closed until the note was deposited with the bank on June 21st. I had the option of a loan.

Q. 1059. In other words, you only arranged for a loan on June 14th?

A. Yes.

Mr. Blake: That is all.

By Examiner Bennett:

Q. 1060. Mr. King, if you know, where are the corporate records of the McElwain Company?

A. You mean the minute books?

Q. 1061. Minute books and stock books, and book containing the by-laws—I suppose that would be the minute-book—and the articles?

A. The stock books, I believe, as I have testified, are with the Old Colony Trust Company of Boston. I do not know where the articles are. I could locate them by inquiry. I do not know where the by-laws are. I have the minute books.

Q. 1062. Are the by-laws and articles spread in the minutes, do you know?

A. I do not know.

Q. 1063. Do you remember what is the present time of the annual meeting, or what has been the time of the annual meeting, since 1921, say?

A. In 1921 the annual meeting was held in August, the date I do not recall. In the fall of 1921 the fiscal year of the company was changed to end November 30th, and the annual meeting was changed from August to either January or February, I do not remember which.

Q. 1064. And it remained January or February, did it?

A. It remained January or February until June, 1923, and I do not know whether it has been changed since or not. I do not know of its having been changed.

Q. 1065. That change would be by amendment?

A. Yes, that change would be by amendment.

[fol. 323] Q. 1066. Amendment to the by-laws or articles?

A. Amendment to the by-laws and articles, I presume.

Q. 1067. Do you remember what notice was required of special meetings?

A. I am not sure, but my recollection is a week.

Q. 1068. You said, I believe, that in May, 1923, you asked for the resignation or suggested the resignation of all of the officers and the board; why was that?

A. Why did I ask for the resignations?

Q. 1069. Yes; of the officers and board of the W. H. McElwain Company.

A. Because the board and officers of McElwain Company were all, or substantially all, stockholders and employees of the International Shoe Company, and I thought it was wise for them to withdraw.

Q. 1070. What officers or members of the board held stock except qualifying stock at that time?

A. Stock of McElwain Company?

Q. 1071. Yes.

A. You are speaking of the officers who resigned?

Q. 1072. Yes; any stock except qualifying stock.

A. I think none of them had any stock except qualifying stock, except that a very large block of stock was in my name not belonging to me.

Q. 1073. You held it in trust practically?

A. And as I recall, a small block of stock, and I do not know whether more than one share or not, was in Mr. Rand's name, but belonged to the International Shoe Company.

Q. 1074. The officers were elected by the board?

A. The clerk was elected by the stockholders. The president was elected by the stockholders. The president was elected by the board, I think, and I cannot testify as to the other officers, whether they were elected by the board or the stockholders.

Q. 1075. The stockholders elected the board, I presume?

A. Yes, the stockholders elected the board.

Q. 1076. What officers resigned at that time?

A. F. C. Rand resigned as president and director. W. L. Shaw resigned as vice-president and director. George Hutchinson resigned as a director. Stanley King resigned as vice-president, treasurer and director. A. H. Matless [fol. 324] resigned as director about that time. But his resignation was because he was leaving the company to go

into other employment. I think that makes up the list. I am testifying from memory.

Q. 1077. How many members were a quorum of your board at that time, Mr. King?

A. As I recall, five.

Q. 1078. Who were elected to succeed the officers and board at that time?

A. C. P. Warren was elected president. C. S. Howland was elected treasurer—I am not sure whether clerk or not—and director. E. L. Prescott was elected a director. F. B. Smith was elected a director. As I recall, Dorothy Meserve was elected a director and did not qualify and C. J. Prescott was then elected to take her place.

Q. 1079. Do you remember the date of that election?

A. My recollection is these elections took place on different dates. My recollection is, beginning May 31st and ending June 6th.

Q. 1080. Who voted the stock at that election, do you remember?

A. Those elections were all made by the directors as the directors had that power.

Q. 1081. Who elected the directors?

A. When one man resigned his place was filled in order to keep a quorum.

Q. 1082. By the directors?

A. By the directors, and then another resignation took place and another election so as to maintain a quorum at all times.

Q. 1083. What interest in the stock of the company did Warren, Howland, Prescott, Smith and the others have at the time they were elected directors?

A. Qualifying shares only.

Q. 1084. And they were transferred to them by the International Shoe Company?

A. Well, it was International stock transferred to them. I think it was probably qualifying shares from the resigning directors. I am not sure as to that. It was International Shoe Company stock.

Q. 1085. It was International Shoe Company stock?

A. Yes.

Q. 1086. On the 15th of June I believe you transferred the stock of the International Shoe Company, that is, the

[fol. 325] great mass of the shares of the preferred stock and 491 shares of common stock, to Bennett, Limited?

A. Yes.

Q. 1087. They were transferred on that date?

A. Yes.

Q. 1088. Were the certificates delivered at that time?

A. The certificates were delivered, as I recall, to the Old Colony Trust Company for transfer.

Q. 1089. Do you know when the certificates were delivered to the Bennett, Limited?

A. I do not, but the Old Colony Trust Company was instructed to deliver them to it as soon as new certificates were issued.

Q. 1090. And the representative of Bennett, Limited, in that transaction was Pierre Bonin?

A. Yes, sir.

Q. 1091. And, as you remember it, the check of the Bennett, Limited, which you had deposited on the 21st of June was placed in your hands on the 17th?

A. I think I testified either the 15th or 17th, and I cannot identify the date closely now.

Q. 1092. That stock transferred an interest of the International Shoe Company amounting to about twenty-one million dollars at that time, didn't it—that is, an investment interest I mean—about $9,500,000 for the original stock and the loan of $11,500,000?

A. It transferred to Bennett, Limited, as I understood the control——

Q. 1093. The ownership of the stock?

A. The ownership of the stock.

Q. 1094. Practically the entire ownership of the company?

A. Subject to the company's debts.

Q. 1095. I understand, but there was an investment at that time of your principal, the International Shoe Company, or something more than twenty-one million dollars in cash?

A. Yes. It did not transfer the debt to them.

Q. 1096. I understand that. Now, on the 21st, I want to see if I understand the transaction of the 21st, at the bank; as I understand it, you took the four million dollar note and established a credit with the National Bank of Com-

merce of New York of four million dollars in addition to the credit that was already established there?

A. That is correct.

[fol. 326] Q. 1097. And then you transferred that credit to the McElwain Company by means of a check dated the 20th—check from the International Shoe Company to the McElwain Company; that is, it did transfer the credit when it was deposited?

A. That check transferred a credit of a different amount. It was four million odd. I have the exact amount here.

Q. 1098. Then Mr. Warren, for McElwain Company issued a check which when deposited by Mr. Bonin transferred a credit of $4,061,094.14 to the credit of Bennett, Limited?

A. That is my understanding; yes.

Q. 1099. Then Mr. Bonin had already given you a check which you deposited and which served to transfer that credit back again to the International Shoe Company?

A. I deposited that check at the same time I deposited the note.

Q. 1100. And it was used in canceling the note?

A. The proceeds of the check were added to the International Shoe Company's account which brought it up to a substantial amount and then I understand the bank charged the account with the note.

Q. 1101. And that closed that transaction?

A. Yes.

Q. 1102. Will you give me very briefly, if you will, the history of the shoe prices of the McElwain Company? I just want first for you to give me the price about 1913 or 1914, before the war—give me the price per dozen, if you can, the lowest, for men's shoes you made, or the average and the highest? Do you remember that? I have reference to retailers.

A. I don't think I can give that. I can get it for you but I was never in the selling end of the business.

Q. 1103. You would not want to give it now?

A. I would not want to give it now.

Q. 1104. What turn-over did the McElwain Company get in its shoes? How long did it take to make a turn-over from the purchase of raw material until return for the sale?

A. That differed on different shoes we made, because on

some shoes we were tanning our own leather. When we were tanning our own sole leather, as I testified we were in 1920, we had to buy our hides in India in the winter and a year's supply, and the turn-over was very slow. On the [fol. 327] leather that we bought in the open market—perhaps I can answer your question, that the manufacturing process in McElwain's factories during that period ran about twenty-eight days. After that the shoes had to be shipped. If they were shoes already sold they went right out to the customer. If they were not sold they were stocked, or if sold for later delivery they were stocked up, but the manufacture of shoes in our factory was twenty-eight days, and the tanning of leather process was very slow.

Q. 1105. Would you say you had as many turn-overs, with the exception of India hides, as Mr. Rand testified to,—about three a year?

A. I could state it in this way: that in the year ending May 31, 1920, McElwain had the biggest business in volume, and the sales for the year ending May 31, 1920, were $49,454,000. The capital and surplus of the company at that time were about $17,000,000. We therefore turned our capital and surplus a little under three times.

Q. 1106. It is about the same then?

A. Yes.

Q. 1107. You went with McElwain some time in 1908, did you state?

A. I went to work for them right from school in 1906.

Q. 1108. From that time up to 1917 do you know anything of its financial history? That is, was it a prosperous concern continuously?

A. From 1906 to 1917 the company's condition was good. In 1907 and 1908 of that period the company went through a very critical period because of the death of the founder of the company in the midst of the 1907 panic. The company's condition was critical at that time, and for a few months thereafter, and then the condition was good up to 1917.

Q. 1109. It made money up to 1917 then, did it?

A. Yes.

Q. 1110. Paid dividends right along, did it?

A. I cannot testify whether it paid dividends every year. After its first preferred stock was outstanding and that was issued in 1911, it never defaulted on any dividends on that stock. I think it never defaulted on its second preferred. Its common stock sometimes paid and sometimes did not.

[fol. 328] Q. 1111. It made money, I presume, during the war?

A. I think it made some money during the war. I was away at that time.

Q. 1112. When you returned with it, did the company make money for 1920?

A. I returned about 1920, right when the situation was breaking. In 1920, the year ending May 31, 1920, it showed a substantial profit on paper which was never realized.

Q. 1113. Do you know if there was any meeting of the McElwain Company subsequent to the 20th of June, 1923?

A. Meeting of the stockholders?

Q. 1114. Yes—or directors.

A. I do not know.

Q. 1115. It would appear from Mr. Warren's action on June 21st that the company had been liquidated to a certain extent; do you know to what extent?

A. To the best of my knowledge, the company's assets consisted of a small deposit in the Old Colony Trust Company of Boston awaiting the action of three or four stockholders in coming to get it.

Q. 1116. Practically in trust for the stockholders?

A. Practically in trust, and I think it had no other liabilities except its capital liabilities.

Q. 1117. In trust as a part of a liquidation plan?

A. I do not know what further action, if any, has been taken looking to the liquidation, but my understanding of its position——

Q. 1118. You do not know whether any formal action has been taken looking to dissolving or to formal dissolution of the corporation?

A. I think that the stockholders' meeting of June 20th took preliminary steps at the stockholders' meeting. I do not know whether anything beyond that has been done or not.

Q. 1119. The stockholders at that time were the stockholders and directors that you have already named, were they not?

A. Yes, sir.

Q. 1120. And they were still holding the stock?

A. So far as I know. I have not been in touch with them.

Q. 1121. What interest did C. J. Prescott have in this McElwain Company at that time? Just that nominal interest of a qualified stockholder?

A. That is all, as far as I know.

Q. 1122. What interest did he have in this transaction [fol. 329] with the Bennett, Limited? He is the person which you said suggested it to you?

A. Yes, he suggested it to me.

Q. 1123. What interest did he have in the deal?

A. You mean financial interest?

Q. 1124. Yes, financial interest. What was his interest? Was it friendly interest or financial interest, or what was it?

A. I think I can best describe that by saying that Mr. Prescott is an old friend of mine. He had no interest in the W. H. McElwain Company except a sentimental interest. He had no particular interest in the International Shoe Company.

Q. 1125. He was a co-officer with you for a number of years?

A. For many years; yes. My impression is that Mr. Prescott, or his family, have some interest in Bennett, Limited, but what it is I cannot testify as to that.

Q. 1126. Do you know what his regular business was at that time?

A. Yes; he was a tanner.

Q. 1127. He was a tanner?

A. Yes, sir.

Q. 1128. All of these men who were officers at that time were personal friends of yours and business associates, or had been theretofore?

A. Yes, that is true.

Q. 1129. Did Bennett, Limited, operate any properties of this kind at that time?

A. Operate any proprties of this kind?

Q. 1130. Yes.

A. No, not so far as I know.

Q. 1131. Had it ever operated any companies of this character?

A. So far as I know, they had never operated any shoe factories.

Q. 1132. Has it a business office or business establishment in the United States?

A. Not that I know of.

Q. 1133. And never has had that you know of?

A. Not that I know of.

Q. 1134. Its business——

A. It may have had without my knowing it.

Q. 1135. Its business is a speculative business? That is it does a speculative business, does it?

A. I have testified so far as I know its business is making and manufacturing and selling leatherboard and fibreboard; it may or may not be speculative, depending on conditions—the sale of waterpower, and it has, I under- [fol. 330] stand, bought securities in the past; what kind of securities I do not know.

Q. 1136. Does it regularly deal in securities? Was that a part of its business?

A. I would not say that it was.

Q. 1137. Was Pierre Bonin a friend of yours?

A. He was an acquaintance of mine; but not a very close one.

Q. 1138. Business or personal acquaintance?

A. Business; not personal.

Q. 1139. Do you know how he came to be in Boston at that time?

A. I do not; no.

Q. 1140. Bennett, Limited, did not gain anything by this transaction, did it?

A. Nothing substantial.

Q. 1141. It did not lose anything?

A. Nothing substantial. I cannot testify as to the dollars and cents, but nothing substantial.

Q. 1142. About the styles of shoes, who fixes those styles?

A. For what company?

Q. 1143. I mean the general styles; who fixes them, or who says there should be a pointed toe shoe this year or a wider toe next year, or a decorated toe this year, or a plain toe this year? How are those styles fixed?

A. In McElwain Company, where most of my experience has been, for the men's shoes we were making we used to regard the source of styles, first, the retailers on State Street, Chicago, and, second, the Broadway retailers in New York, or near Broadway.

Q. 1144. The retailers then are the people especially interested in new styles?

A. I am testifying only as to men's shoes. Yes. So many manufacturers are themselves developing styles all the time to see if they meet the demands of the community.

Q. 1145. Somebody spoke of the Great Northern Shoe Company; what was that?

A. The Great Northern Shoe Company was a selling branch of W. H. McElwain Company and is now a selling branch of the International Shoe Company.

Q. 1146. At what point?

A. Headquarters in Boston and Manchester, New Hampshire.

Examiner Bennett: I think that is all.

[Witness excused.]

[fol. 331] Mr. Brindley: I now offer in evidence as Commission's Exhibit Number 12 a statement from the National Bank of Commerce of New York of the account of the International Shoe Company of St. Louis for the month of June 1923, which was identified and referred to by the witness F. A. Sudholt in his testimony in this proceeding. This statement of account is offered in evidence on the understanding a photostatic copy of it will be made as soon as possible and substituted in the record for this statement of account and this original statement of account returned to the respondent within the next ten days.

Examiner Bennett: That is satisfactory.

F. A. SUDHOLT, having been previously sworn, was recalled and further testified as follows:

Direct examination.

By Mr. Brindley:

Q. 125. You are the treasurer of the International Shoe Company?

A. Yes.

Q. 126. You are the one that testified about the account which you hold in your hand, Exhibit Number 12, from the National Bank of Commerce with the International Shoe Company?

A. I am the one.

Q. 127. You have that statement of account, Exhibit Number 12, before you?

A. Yes.

Q. 128. Can you tell me what these figures are in pencil near the center of that sheet?

A. I do not know of my own knowledge. I can guess at it.

Q. 129. Were those figures made by you?

A. No, sir.

Q. 130. Can you tell me who they were made by?

A. Again, I can only guess at it. There are just one or two parties that might have done it.

Q. 131. If you do not know, that is all right.

A. The figures were placed there by someone who checked the statement.

Q. 132. Do you know, you say, who made the figures?

A. I did not see them made, so I can only guess.

Q. 133. Do you know the handwriting?

A. I do not know whether I should go that far. It might [fol. 332] be anyone's in our office. I only know just about two parties that would handle that statement besides myself; that would be the bookkeeper and the cashier.

Q. 134. What are their names?

A. Mr. Sitton the cashier, F. R. Nurre is the bookkeeper.

Q. 135. I see on this statement of account notation made in pencil of two sums, first $4,063,125.89 and underneath that the sum of $4,061,093.72; there is a line drawn underneath and beneath the line $2,032.17, and added to that the

words "Charge McElwain's stockholders 7/3". Can you explain that?

A. I think it was a memorandum made by the party who checked the statement.

Q. 136. But you do not know who that was unless it would be the two persons you have named?

A. No.

[Witness excused.]

FRANK C. RAND, having been previously sworn, was recalled and further testified as follows:

Direct examination.

By Mr. Brindley:

Q. 717. You are the gentleman who testified heretofore in this proceeding?

A. One of them; yes.

Q. 718. And are the president of the International Shoe Company?

A. Yes, sir.

Q. 719. Examine that document that I hand you and tell me if you can identify it.

A. That is a catalogue of the Roberts, Johnson & Rand branch of the International Shoe Company, being our catalogue number 36, issued in the spring for styles of shoes that we were selling in the spring and summer of 1921.

Q. 720. That is a correct issue of the catalogue for that period of the International Shoe Company, is it?

A. Yes.

Q. 721. The catalogue which was actually used?

A. Yes, sir.

Q. 722. You heard the testimony of Mr. Jackson Johnson in this proceeding, did you?

A. Yes, sir.

Q. 723. And you remember that he testified regarding thirty-two different styles of men's and boys' shoes made by the International Shoe Company of which similar styles [fol. 333] were made by the McElwain Company in the period for which this catalogue covers?

A. Yes.

Q. 724. Can you take that same catalogue you have before you for the spring and summer of 1921 and show thereon the different types and styles of men's shoes made by the International Shoe Company similar to the types and styles made by the W. H. McElwain Company?

A. I can identify the drawings or pictures of the shoes that we were making at that time which came into the general type of shoes that I believe that McElwain was manufacturing at that time.

Q. 725. Will you refer to them on the appropriate pages of the International Shoe Company catalogue for the spring and summer of 1921 and mark in numbers from 1 to 32 those styles of shoes mentioned?

A. I will. I have so marked them on pages 4 and 5 by numbers written in ink by me from 1 to 10 inclusive, representing low-cut shoes known in the trade as Oxfords, and on pages 27, 28 and 29 I have similarly designated high-cut shoes by numbers from 11 to 32, inclusive.

Q. 726. Those numbers from 1 to 32, inclusive, you have just described, are the styles or types of men's and boys' shoes—

A. They are men's shoes and Oxfords.

Q. 727. Including what we know as high shoes and low-cut shoes?

A. Yes, sir.

Mr. Brindley: We offer in evidence, as Commission's Exhibit Number 13, the catalogue number 36, spring and summer of 1921, of the International Shoe Company, showing the numbers on the pages 4 and 5, and 27, 28 and 29 of that catalogue, as made and testified to by Mr. Rand.

The Witness: I would like to add that all catalogues issued are prepared by artists and regardless of the sincerity or effort to have the illustration properly represent the shoe, it is extremely difficult to make the pictures of the shoes easily distinguishable. The artist will often make the $1.50 to $1.75 shoe look as good as the $5 or $5.50 shoe.

Examiner Bennett: The exhibit is received.

[Said catalogue was thereupon marked, for identifica-
[fol. 334] tion, "Commission's Exhibit 13, Witness Rand", was received in evidence and is forwarded herewith.]

Q. 728. The good shoe dealers like to make a good advertisement for their product, don't they?

A. That is not the purpose I had in mind. In that statement what I am calling your attention to is the fact that we would like to make our highest grade shoes give evidence of their high grade and our lower grades give evidence of those lower grades, but it is practically a physical impossibility to do that in a photograph or artistic cut.

Mr. Brindley: I think that is all, Mr. Rand.

Cross-examination.

By Mr. Blake:

X Q. 729. Mr. Rand, can you identify that sheet of paper which I hand you?

A. I can. This is a letter of June 12, 1923, written by me as president of the International Shoe Company to the W. H. McElwain Company at 590 Atlantic Avenue, Boston, Massachusetts.

Mr. Blake: We offer that as Respondent's Exhibit Number 38.

Examiner Bennett: It will be received.

[Said letter was thereupon marked, for identification, "Respondent's Exhibit No. 38, Witness Rand," was received in evidence and is forwarded herewith.]

X Q. 730. Mr. Rand, since you were on the stand before have you computed the actual amount which the assets and properties of the W. H. McElwain Company cost the International Shoe Company?

A. Yes.

X Q. 731. Will you give us that computation?

A. In 1921, as rapidly as we secured the stock of the McElwain Company, and in the period after May 11th of that year, we paid for the stock of the McElwain Company $9,463,599.20. In June 1923 we paid in cash for the net assets and properties or the W. H. McElwain Company $4,063,125.89. In June 1923 we assumed all of the McElwain Company's liabilities, amounting to $12,474,696.02; making total payment by the International Shoe Company of $26,001,421.11. In June 1923 we received in cash as the

proceeds of the sale of the McElwain stock formerly secured by the International Shoe Company $4,061,093.72, [fol. 335] making the cost to the International Shoe Company for the assets of the McElwain Company $21,940,327.39.

X Q. 732. Then that is the amount of money that these assets cost the International Shoe Company and not $2,031 as has been asked by the attorney for the commission on several occasions?

A. $21,940,327.39 is my conception of the cost to the International Shoe Company of the properties of the McElwain Company and these figures are in accord with the books of the International Shoe Company.

X Q. 733. Mr. Rand, Mr. Stanley King was the eastern representative of the International Shoe Company in June 1923?

A. He was.

X Q. 734. A man that you have confidence in?

A. He is.

X Q. 735. In his representative capacity did he come in touch with the banks of the International Shoe Company in the east?

A. Yes, he came in contact with them.

X Q. 736. That is, he handles many financial transactions for the International Shoe Company and for individuals connected with the International Shoe Company?

A. Yes.

Mr. Brindley: We object to that; it don't make any difference what he handles now.

X Q. 737. I will ask you if he did not handle many financial transactions for the International Shoe Company in connection with those banks?

A. Yes, sir.

X Q. 738. Didn't many of those transactions involve considerable sums of money?

A. Yes.

[Witness excused.]

Colloquy Between Court and Counsel

Mr. Brindley: The commission rests at this time.

Mr. Blake: I have nothing to introduce at this time.

Examiner Bennett: What is your pleasure?

Mr. Blake: When the commission has concluded its proof we will have some proof to take.

Examiner Bennett: He has rested.

Mr. Blake: You mean you rest your entire proof?

Mr. Brindley: That is my announcement for the present.

Mr. Blake: The International Shoe Company is not pre- [fol. 336] pared to introduce at this time its additional proof, but it reserves the right to introduce additional proof when the commission has notified us that it has concluded its proof.

Examiner Bennett: It does notify you now, as I understand it. That is true, isn't it, that you are resting?

Mr. Brindley: We are resting at this time, and has the respondent any evidence to offer——

Mr. Blake: Then we ask for a continuance of the taking of proof for a period of two weeks in order to work up certain information that is necessary and which is not available at this time.

Examiner Bennett: You are not in a position to go ahead?

Mr. Blake: We are not in a position to go ahead.

Mr. Brindley: We object to giving them any continuance of two weeks at this time, to work up evidence. We are here and ready to take up whatever they have to offer, and I move that they proceed to do so at once. They have had long notice of this proceeding, that the hearing would be held at this time. We are here for the purpose of taking that testimony, if they want to offer it. I shall object to any continuance, a continuance of two weeks, or any other time.

Examiner Bennett: You say that your proof is not ready?

Mr. Blake: It is not.

Examiner Bennett: What is the nature of the proof; something you have got from your books, or something of that sort?

Mr. Blake: The commission has introduced into the evidence certain sheets which were prepared by the W. H. McElwain Company concerning its customers in some thirty odd states in the United States.

Examiner Bennett: That is the respondent's exhibit, I believe.

Mr. Blake: That is a respondent's exhibit.

Mr. Brindley: The commission introduced no such evidence in the record.

Mr. Blake: And it consists of numerous pages. It consists of a number of names of individual retailers. It is necessary for the International Shoe Company, on the question of competition, to compare those sheets with its rec- [fol. 337] ords, to see whether or not any competition, or any possible competition, existed with respect to that exhibit.

Mr. Brindley: To what sheets do you refer, Mr. Blake?

Mr. Blake: I refer to Respondent's Exhibit Number 37.

Mr. Brindley: That is an exhibit that you yourself introduced on yesterday, in evidence.

Mr. Blake: On the sheets which were originally introduced by the attorney for the commission and upon which he based certain questions.

Mr. Brindley: I beg your pardon, but the commission did not introduce that evidence. We certainly do not think that the respondent can offer testimony in evidence here on one day and the next day ask a continuance for two weeks in order to refute the testimony he has introduced.

Mr. Blake: The commission's attorney originally, as the record will show, used those sheets in connection with one of the witnesses, and they were subsequently introduced, and the commission's attorney, from those sheets, had the witness testify as to certain things on the sheets. In order to properly answer and explain that evidence it is necessary for the International Shoe Company to do a considerable amount of work.

Examiner Bennett: You say it will be necessary for you to take testimony in Boston?

Mr. Blake: Yes.

Examiner Bennett: You can put in your whole case then in Boston, can you?

Mr. Blake: I think we can.

Examiner Bennett: You can put in this evidence you speak of at that time.

Mr. Blake: I think we can, provided the hearing is not set too soon.

Examiner Bennett: Two weeks would give you time?

Mr. Blake: I think that will be sufficient.

Examiner Bennett: Colonel, I do not believe I will allow your motion or objection, and now it is a question of what

time you want to adjourn to Boston. I want to get information on this.

[fol. 338] [Discussion, not reported by direction of the examiner.]

Examiner Bennett: By agreement, we will take an adjournment to Boston, Massachusetts, at ten o'clock, Monday, June 16, 1924; hearing to be held at the Federal building.

[Thereupon, at 11 o'clock a. m. on May 31, 1924, an adjournment was had to Monday, June 16, 1924, at 11 o'clock a. m., Federal building, Boston, Massachusetts.]

EVIDENCE FOR THE RESPONDENT

Boston, Mass., June 16, 1924.

Before John W. Bennett, Examiner

Met pursuant to adjournment, 10 a. m.

Appearances:

Mr. Brindley for the Commission.
Mr. Blake for the Respondents.

Examiner Bennett: The case of Federal Trade Commission against the International Shoe Company, Docket 1023, is set for hearing at this time and place. You may proceed.

Mr. Blake: Before the respondent opens its case I would like to have a definite statement from the attorney for the commission as to having closed his case in chief.

Mr. Brindley: Oh, my answer to that is, that we have closed it in chief,—at least, for the time being.

Mr. Blake: I don't believe that that is a definite statement.

Mr. Brindley: I will make it just as definite as I can, and explain it to you as far as I know it. Under the procedure that we ordinarily follow, we are not governed by the strict rules applicable to the courts; we do not have to follow the strict rule about the announcement of the closing by either side, or resting, or final closing of the case. We proceed

more as a matter of convenience for all parties concerned; and sometimes, when we have finally closed the case, and as we see it and think there is no more testimony to be adduced, the case is reopened and we take additional testimony; and sometimes, as I understand it, the commission directs the taking of further testimony and reopens the case on its own motion, without any suggestions, request [fol. 339] or objection from either side. I can say only this: for the present I have rested, as I announced at St. Louis. Whether we take additional testimony or not I cannot say.

Mr. Blake: Then the respondent is prepared, at this time, to answer the commission's case as presented this far.

Mr. Bindley: And I will say further that if we take any additional testimony after this hearing, that you will have full and free opportunity to introduce testimony in rebuttal to that. That is a correct statement, is it not?

Examiner Bennett: Yes; surely. You will find that the organic act of the commission provides for the reopening practically at any time before the matter has been taken up by the courts and, in fact, for some purposes, even until it has been decided. If you will read Section 5 of the organic act you will see that is provided for; and we do not apply strictly the matter of the order of testimony, although we follow it as far as we can, because it is probably the best for all concerned; but you will be free to open your case at any time. I will not shut out any competent or relevant matter just because it was not introduced at the proper time.

Clifton H. Dwinnell was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Blake:

Q. 1. Mr. Dwinnell, will you state your full name, address and business?

A. Clifton H. Dwinnell; 67 Berkeley Street, West Newton, Massachusetts; my occupation is vice-president in charge of credits of the First National Bank of Boston.

Q. 2. In a general way, what are your duties as vice-president of the First National Bank of Boston?

A. Why, general oversight of credits, or going over statements from time to time with most of our important concerns as they bring in their annual statements or semi-annual statements, and the passing on lines of credit in conference with the other officers of the bank.

Q. 3. How long have you been vice-president of the First National Bank of Boston?

A. Since 1904.

[fol. 340] Q. 4. Were you vice-president of the First National Bank in April and May, 1921?

A. Yes, sir.

Q. 5. To what extent were you in touch with the shoe industry in Boston and in New England in 1921?

A. Why, I have always been in very close touch with the shoe and leather industries, both, for the reason, if it is relevant at all, that I formerly was connected, previous to the consolidation, with the Shoe & Leather National Bank, which made a specialty of the shoe and leather business. We merged, ultimately, with the First National Bank; and naturally, having given more or less time to the shoe and leather credits, I followed the shoe and leather credits as well as other lines,—perhaps wool,—right through up to the present time. I think we have had, for a great many years, practically all the important shoe accounts of New England, as well as some outside of New England.

Q. 6. In 1921 what was, in a general way, the attitude of your bank toward the shoe manufacturers?

A. Why, it was an industry which we were watching very closely, because there had been a considerable falling off market prices both of the—well, leather first, and then shoes, and I think that industry was the one I had been watching as closely—perhaps more closely than any other line, because the shoe and leather industries are more or less kindred, and were affected, perhaps, more than any other line of industry in New England.

Q. 7. Do you know the general financial situation as it existed in May, 1921?

A. Yes. Mr. McElwain——

Q. 8. I am speaking of the general situation in New England.

A. In New England?

Q. 9. Yes.

A. What do you mean by the general situation?

Q. 10. The financial situation.

A. The general business situation was quite critical. Fortunately, from the financial standpoint, we had our Federal Reserve Banks that we felt we could fall back on in case of need; but if we had not, I am inclined to think we might have faced a similar situation to the time we had along in 1907, which was a general business and financial panic.

Q. 11. What was the situation as to the general shoe [fol. 341] manufacturing industry at that time, 1921?

A. Why, there were a great many cancellations of orders; the country was over-produced, not only in that line, but a great many other lines, and it resulted in a great deal of distress to concerns which had gone ahead and manufactured on orders, and then had their orders cancelled, or their goods sent back, which was really another way of cancellation.

Q. 12. Do you know the situation of the W. H. McElwain Company in 1921?

A. Mr. McElwain brought in some figures, which I looked over with him, showing the condition of his company at that time.

Q. 13. W. H. McElwain & Company was one of the shoe accounts that you had?

A. Yes, sir.

Q. 14. As vice-president of the First National Bank, it was part of your duties to know the financial situation of your clients, was it not?

A. Yes, sir.

Q. 15. You say you went over this financial statement with Mr. McElwain?

A. Yes, sir.

Q. 16. What would you say was the condition of the McElwain Company at that time, after looking over this statement?

Mr. Brindley: Have we these statements in evidence?

Mr. Blake: Yes, they are in evidence.

Mr. Brindley: They speak for themselves, then, don't they?

Mr. Blake: In certain ways.

Mr. Brindley: Well, I believe I will object to your question on the ground, in addition to the calling for the conclu-

sion of the witness, that you have not shown that he has any knowledge of the business at all,—what he secured was purely hearsay.

Q. 17. Mr. Dwinnell, you say you have been in the banking business since 1904?

A. No, sir; since 1895.

Q. 18. And have been with the First National Bank since 1904?

A. 1904; yes, sir.

Q. 19. You say during that time it had been your duty to look over the financial credits, and so forth, of your clients?

A. Go over factories,—go over stores, and look over the inventories.

[fol. 342] Q. 20. Did you know the financial condition of the W. H. McElwain Company in 1921?

A. Yes, sir.

Q. 21. What was their situation?

A. Very critical.

Q. 22. Did you have any discussion with the executives of the W. H. McElwain Company as to their condition at that time?

A. Yes, sir.

Q. 23. Did you have any discussion with them as to any remedy or remedies that might be applied to that situation?

A. Well, I had told them that something had got to be done right away, or they would be in trouble.

Q. 24. Were any plans discussed?

A. I think Mr. McElwain asked if I thought it would be possible for him to ask an extension from his banks; and my answer was that he could ask it, but I could not answer as to that.

Q. 25. You could not tell what the answer of the banks would be?

A. No, sir; there were a great many of them.

Q. 26. Were there any other plans discussed?

A. Yes, sir; we talked of the possibility of getting in more capital, or selling out. This was, I think, the first talk I had with him——

Q. 27. Just a minute. This was the first talk you had?

A. Yes, sir.

Q. 28. Now, as to the question of getting in more capital, what was the result of that discussion?

A. He said it could not be done.

Q. 29. And you say the other plan discussed was selling out?

A. Well, what Mr. McElwain said: "What can we do?" And the answer at that time was: "You could ask to get an extension from your banks." I think I mentioned that it would be, probably, quite a long extension; or get in more capital, or in some way sell out his business and get into some new interest, so that the debts might be protected.

Q. 30. Were there any other alternatives discussed at that time, or suggested?

A. Not that I remember.

Q. 31. What was the result of the discussion as to the possibility of getting in new capital?

A. He said it was impossible. I think he had already [fol. 343] talked with Lee, Higginson, who had put out some of his securities.

Q. 32. What was the only practical alternative at that time, Mr. Dwinnell?

A. A receivership.

Q. 33. That is, other than the ones you have suggested?

A. Yes, sir.

Q. 34. And you say that the additional capital was impossible?

A. The extensions he could try, but I felt it really was impossible, because there were so many banks involved.

Q. 35. Now, you knew the financial situation of the W. H. McElwain Company; in your opinion, as a financier, do you think this extension would have been granted?

A. No, sir.

Q. 36. Then the only alternatives in the final analysis were receivership or sale?

A. Yes, sir.

Q. 37. Now, in your opinion as a financier, what would have been the result of a receivership for the W. H. McElwain Company, as to the stockholders?

A. I doubt if the stockholders would have had anything at all.

Q. 38. What would have been the result as to the communities its factories were located in?

A. Well, I think the—of course, a lot of people would have been thrown out of employment; but what concerned me more was its effect on the other shoe industries in New England, as far as their credit was concerned.

Q. 39. What effect would that have had?

A. I think it would have caused a lot of distress to the other manufacturing concerns, because the failure of W. H. McElwain Company would have been almost the last straw; and in a time like the spring of 1921, probably banks, in a great many cases, would have called their shoe and leather notes.

Q. 40. What was the situation in the leather and tanning trade at that time?

A. Well, I cannot answer as to just how much business was being done, of course, in tanning. Tanning goes on for some time after anything happens; but there were constantly falling prices, orders were cancelled for leather, and we had a great many distressed concerns, and we still have them.

[fol. 344] Q. 41. You mean tanning concerns, and leather?

A. Leather concerns and tanning concerns, both.

Q. 42. Then they were in much the same situation as the shoe industry?

A. Yes, sir.

Q. 43. Would this receivership of the W. H. McElwain Company have had any effect on that industry?

A. Why, I think the shoe and leather and hides have been so closely allied, that it would have had a bad effect on the standing of those other kindred lines, as well as the shoe lines, from a credit standpoint.

Q. 44. Then, Mr. Dwinnell, in your opinion as a financier, what was the result of this sale to International Shoe Company of the W. H. McElwain Company?

A. I think it averted a catastrophe for New England; incidentally resulted in the payment of $15,000,000 or $16,000,000 worth of debts.

Q. 45. Which would not otherwise have been paid?

A. I never thought it would.

Mr. Blake: Your witness.

Cross-examination.

By Mr. Brindley:

X Q. 46. Was the First National Bank handling the account of W. H. McElwain Company?

A. One of the banks; they had a great many bank accounts.

X Q. 47. Your bank was one of several banks, then, to which W. H. McElwain was indebted?

A. We loaned them $1,000,000.

X Q. 48. How much?

A. $1,000,000.

X Q. 49. Your statements about the distressed effect here are based upon your pure opinion only, are they not?

A. Well, the catastrophe was averted, so it must be a matter of opinion. It is based on this experience: that we have had failures in New England, and we have been——

X Q. 50. But the W. H. McElwain Company did not fail, did it?

A. No.

X Q. 51. The catastrophe, then, that you have been testifying to did not occur?

A. No, sir.

X Q. 52. There was no hardship or loss to the stockholders nor default to creditors, was there?

A. Yes, sir.

[fol. 345] X Q. 53. What was it?

A. Loss to stockholders.

X Q. 54. Well, that was voluntary with them, was it not?

A. I cannot answer for them.

X Q. 55. You know they sold their stock, do you not?

A. Yes, sir.

X Q. 56. But you do not know that this was the only method of saving the W. H. McElwain Company from failure, do you?

A. I should question any other alternative.

X Q. 57. I am asking you a certain question. You do not know that that is the only method by which it could be saved from bankruptcy, do you?

A. I am perfectly willing to go on record as saying it could not be saved in any other way.

X Q. 58. That is your opinion?

A. Yes, sir.

X Q. 59. You do not know but what it was possible for somebody else to buy it than the concern that did buy it, do you?

A. I think it could have been bought only by one of two concerns,—by two concerns.

X Q. 60. So, then, there was another chance besides the one that was exercised?

A. I cannot tell that.

X Q. 61. Your statements are all based on what would have happened if something else had happened, aren't they?

A. No, sir.

X Q. 62. Well, now, what are they based on?

A. Read me my statements, and I will answer each one.

X Q. 63. Well, you said that if the W. H. McElwain Company had failed, or gone into the hands of a receiver, there would have been a loss to stockholders, did you not?

A. Yes, sir.

X Q. 64. Well, now, that is based on the prediction or the assumption——

A. No, sir.

X Q. 65. Well, it didn't go into the hands of a receiver, did it?

A. The statement was not based on that.

X Q. 66. What was it based on?

A. It was based on the experience of 100 failures in the shoe business; I mean, we have looked up statistics.

X Q. 67. So your bank has been interested in a number of shoe failures?

A. Yes, sir.

X Q. 68. And did it result in this peculiar or difficult [fol. 346] financial situation that you have predicted?

A. There was never a shoe concern in New England as large as the McElwain Company.

X Q. 69. You do not know what would have happened if the International Shoe Company had not bought the stock of W. H. McElwain Company, do you?

A. Do you want my opinion?

X Q. 70. No; I want to know what you know.

A. Then I don't see how I can answer that question.

X Q. 71. You can say you do not know, can't you?

A. I can say that; yes.

X Q. 72. Isn't it true that you do not know what would have happened if the International Shoe Company had not bought the stock of W. H. McElwain Company?

A. Well, I would still express my opinion——

X Q. 73. But I do not want your opinion.

A. All right, sir.

X Q. 74. I want to know what you knew at that time.

A. Well, all I know any time is what has passed.

X Q. 75. Certainly. So you do not know what would have happened if the International Shoe Company had not bought the stock of the W. H. McElwain Company?

A. I am not a prophet, sir.

X Q. 76. You have no ability to read the future, have you?

A. No one has ever charged me with that.

X Q. 77. So your statements here about what would have happened, had there been a receivership, are nothing in the world but your opinions, are they?

A. Well, of course, a credit man in a bank, as to the present situation, forecasts the future with respect to every concern it has on its books; and so we have to make use of our opinion in deciding whether we will grant a concern a loan, or whether we will not loan to a concern. I can say this: that it was our intention to ask the McElwain Company to pay its loan; that had been gone over by our executive committee.

X Q. 78. Now, do you think you have answered my question?

A. I cannot tell you.

Mr. Brindley: Will you read the question to him again, Mr. Stenographer?

[The question is read.]

A. That is my opinion.

[fol. 347] X Q. 79. How long after the sale of the W. H. McElwain stock to the International Shoe Company did the bank with which you are connected handle the account of the W. H. McElwain Company?

A. I think until they finally merged.

X Q. 80. When was that?

A. I cannot tell you.

X Q. 81. Was it ever finally merged?

A. I cannot tell you that.

X Q. 82. Then how long after the sale of the stock to the International Shoe Company did the W. H. McElwain Company have an account at your bank?

A. It is a matter of months; I cannot say whether three or four months or six months.

X Q. 83. Does it handle any account now for the W. H. McElwain Company?

A. No, sir.

X Q. 84. Did it handle any account for the W. H. McElwain Company in May, June or July of 1923?

A. I cannot answer.

X Q. 85. You had nothing to do with it, if there was such an account then?

A. No, sir. In explanation of that answer—of course we have something over 10,000 accounts which from the books of the respective companies have been closed out; but owing to outside checks, or interest accumulations, or something of that sort, the account is still on our books, so that account might be on our books for aught I know.

X Q. 86. It would not be what you call an active account?

A. No, sir.

X Q. 87. Did you have any connection with the acquisition, by the International Shoe Company, of the stock of the W. H. McElwain Company, further than you have testified about today?

A. No, sir.

X Q. 88. Did you ever have any connection with the sale or transfer of the assets of the W. H. McElwain Company to the International Shoe Company?

A. Not as far as I know. Whether our concern,—some other department of the bank did,—I could not answer that.

X Q. 89. You had nothing to do with it in your department?

A. In the credit department? No, sir.

[fol. 348] Redirect examination.

By Mr. Blake:

Q. 90. Mr. Dwinnell, you stated at one point in your cross-examination that there were possibilities of selling

to others, and there was possibly one buyer besides the International Shoe Company. At that time did not you and the executives of the McElwain Company make a study of the field to ascertain the possibilities as to——

A. Why, at that time I think no one had been talked with, as far as I know, by Mr. McElwain or the other officers of the company; but we talked over the possibilities of who would buy that business.

Q. 91. What was the other possibility as a buyer?

A. The Endicott-Johnson Company.

Q. 92. Do you know what their condition was just at that time?

A. Their condition was sound. I cannot tell you the figures.

Q. 93. Are they shoe manufacturers?

A. Yes, sir.

Q. 94. They are large shoe manufacturers in the United States?

A. Yes, sir.

Mr. Blake: I think that is all.

Examiner Bennett: The shoe and leather and tanning business had had several prosperous years just previous to that, 1921?

The Witness: Well, during the war the shoe, leather and tanning industries were quite prosperous here in New England.

Examiner Bennett: What was it brought about the critical situation with the companies, as apart from the failure or the slowing up of business?

The Witness: I cannot quite get that.

Examiner Bennett: I say, what was it brought about the critical situation of these companies, aside from the slowing up of business?

The Witness: Well, it meant a great deal more than the slowing up of business, because that was followed by the cancellation of orders. For instance, I have in mind the Lewis Manufacturing Company, manufacturing a line of cotton. It had cancelled some $10,000,000 worth of orders for which it had bought the cotton, and it simply had on its hands an inventory which it took five or six years to liquidate.

[fol. 349] Examiner Bennett: But it was the other phase of the matter that I wanted to get at. Was it the practice of these companies to distribute their profits in dividends, and fail to make provision for the probable turn in business?

The Witness: No, sir; they always made provision. That is one of the things the banks were very careful about.

Examiner Bennett: The provision was inadequate?

The Witness: No. Nobody could tell whether it was adequate or not.

Examiner Bennett: It turned out to be inadequate, in many concerns?

The Witness: In many corcerns; yes, sir.

Examiner Bennett: And this particular concern, it turned out to be thoroughly inadequate?

The Witness: It was inadequate in wool, leather, and shoes. I might say that four years ago I went to South American countries with a friend, and a certain grade of wool was selling here at $1.60 a pound, and the man I went with bought that same wool scoured and landed in Boston for 12½ cents a pound.

Examiner Bennett: Is it not the practice, in that business, to divide its profits in dividends when things are prosperous, and to not make provisions for changed conditions? These concerns do not continue to protect themselves? Isn't that true of every concern that gets into the condition such as you outlined for the W. H. McElwain Company?

The Witness: No, sir.

Examiner Bennett: What else was it?

The Witness: They had, as I remember, something like $8,000,000 worth of orders cancelled, and shoes sent back on a technicality by people that thought they could buy them cheaper.

Examiner Bennett: Could not they have provided in prosperous times for just that sort of a blow?

The Witness: No; we have not had such a condition in falling commodity prices in years.

Examiner Bennett: That is, you think they were not [fol. 350] loaded up on commodities, or loaded up on unmarketable goods, beyond the limit of prudence?

The Witness: No, sir.
Examiner Bennett: I see; all right. That is all.

[Witness excused.]

STANLEY KING was thereupon recalled as a witness, and testified further as follows:

Direct examination.

By Mr. Blake:

Q. 1147. State your name and occupation.
A. Stanley King; International Shoe Company, Boston, Massachusetts.
Q. 1148. Mr. King, you have heretofore testified in this case, haven't you?
A. I have.
Q. 1149. I hand you a sheet of paper and ask you to identify that, Mr. King.
A. That is a record of the numbers of shoes produced by the W. H. McElwain factories, by months in the years 1920, 1921, 1922, and the pairs produced in the same factories up to April, 1924.
Q. 1150. Up to and including April——
A. Up to and including April, 1924.
Q. 1151. Now this record that you have there gives us the units as pairs of shoes, does it?
A. Pairs of shoes.
Q. 1152. And it is arranged according to the months in the several years, 1920, 1921, 1922, 1923 and 1924?
A. It is.

Mr. Blake: We offer that as Respondent's Exhibit 39.

[Record of shoes produced by McElwain factories marked "Respondent's Exhibit 39".]

Q. 1153. Mr. King, I will ask you to read into the record the number of shoes produced in the months beginning November 1920, and including May 1921.
A. November 1920, 87,652 pair. December 1920, 154,689 pair. January 1921, 77,709 pair. February 1921, 162,210

pair. March 1921, 234,569 pair. April 1921, 196,917 pair. May 921, 261,092 pair.

Q. 1154. What was the date that the International Shoe Company took over the W. H. McElwain Company?

A. May 11, 1921.

[fol. 351] Q. 1155. And since that date has the production, at any time, been as low as in the months that you have just read?

A. At no time.

Q. 1156. And what is the average monthly production along in the latter part of 1921, and the year 1922; just roughly?

A. About 650,000 pairs per month.

Q. 1157. You have there another sheet which I will ask you to identify.

A. That is the record of the sales of the W. H. McElwain Company for the months of September to May, inclusive, in the years 1919-1920, and in the years 1920-1921; showing the decrease in sales in the year 1920-1921 from the year 1919-1920, and the percentage of decrease by months, and the total.

Mr. Blake: We offer that as Respondent's Exhibit 40.

[Record of sales of W. H. McElwain Company, portions of 1919-1920, and 1920-1921, marked "Respondent's Exhibit 40".]

Examiner Bennett: It may be received; both are received.

Q. 1158. Mr. King, you say that on this exhibit is shown the decrease in each month in 1920 sales over the same months of the preceding year?

A. Yes; the decrease in dollars, and the decrease in percentage.

Q. 1159. Now, what is the lowest decrease shown on this sheet between September 1920 and May 1921, in percentage?

A. The lowest decrease in percentage and in dollars is for the month of September 1920, when the decrease over the September of the year before was 41 per cent.

Q. 1160. And what is the highest percentage of decrease; in what month?

A. The highest percentage of decrease is for the month of January 1921, where the decrease from the January of the year preceding was 91 per cent.

Q. 1161. What was the average decrease for the period shown on this sheet?

A. The average percentage of decrease was 73 per cent.

Q. 1162. Now, Mr. King, you have described this as the sales of the W. H. McElwain Company. Do you mean by that, sales to retailers?

A. I mean sales to retailers, wholesalers and jobbers.

[fol. 352] Q. 1163. Have you been able to get any record of the sales to retailers exclusively, or sales to the jobbers and wholesalers?

A. I have not.

Mr. Blake: That is all.

Mr. Brindley: I don't believe I have any questions now. I presume Mr. King will always be accessible, when he is in Boston, if we want to ask him any questions.

Mr. Blake: Mr. King will be out of the city tomorrow morning, and be back in the afternoon.

Examiner Bennett: Will you tell me what the normal capacity of the McElwain plant was at that time?

The Witness: In pairs?

Examiner Bennett: Yes; the normal monthly capacity.

The Witness: Our normal monthly capacity at that time was approximately 825,000 pairs per month; that is based on 33,000 a day, twenty-five working days in a month.

Examiner Bennett: And by "capacity" you have in mind actual accomplishment, I suppose, under favorable conditions; or is it possible capacity?

The Witness: It is estimated possible capacity. Actual accomplishments in 1920, the highest month in 1920 was April, when we made 716,592 pairs.

Examiner Bennett: Would that be about the high water mark of accomplishment under normal conditions?

The Witness: No; in 1923 it ran up to 784,669.

Examiner Bennett: Were there somewhat improved facilities?

The Witness: No; the same facilities. 789,855 was the maximum in 1923. During the war, 1918, the company must have run up well over 800,000. It depends, if I may say so, upon the character of the shoes we are producing, as well as on the other factors.

Examiner Bennett: What would be about your normal sales?

The Witness: Well, in 1919 we were running from $2,500,000 to $3,500,000, and one month up to $4,000,000, in a month.

Examiner Bennett: That is not in pairs; you are estimating that in dollars.

[fol. 353] The Witness: That is in dollars; yes.

Examiner Bennett: $2,500,000 to what?

The Witness: To $4,000,000.

Examiner Bennett: Did you have the same sales force when your sales fell off so radically? Did you have the same sales forces covering the same territory, or had you curtailed your sales force?

The Witness: No, we had not curtailed our sales force, as far as I know. We naturally would not have.

Examiner Bennett: These figures, the basis, I suppose, is sales for the previous year?

The Witness: The basis is sales of the previous year, and the percentage of decrease as in terms of that.

Examiner Bennett: In terms of the sales for the previous year?

The Witness: Yes.

Examiner Bennett: That is all.

[Witness excused.]

[Noon recess, 11.30 a. m. to 1.30 p. m.]

After Recess, 1.30 p. m.

Examiner Bennett: You may proceed, Mr. Blake, if you are ready.

Mr. Blake: Mr. Gile, will you take the stand, please?

Ernest S. Gile was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Blake:

Q. 1. Mr. Gile, you may state your name, address and occupation.

A. Ernest S. Gile; business address, 183 Essex Street, Boston; publisher of the weekly trade journal for shoe manufacturers and tanners called "The Weekly Bulletin of Leather and Shoe News"; and an annual book devoted to the collection and indexing of the financial statements and balance sheets of the leading houses in the leather and shoe business.

Q. 2. These publications are published here in Boston, are they, Mr. Gile?

A. The main office in Boston; the printing is done outside of Boston.

[fol. 354] Q. 3. In these publications what is the nature,—that is, other than the financial statements which are collected into one volume, I believe you say?

A. Yes.

Q. 4. Other than that, what is the nature of the news?

A. Well, we aim to publish news that is interesting to shoe manufacturers and tanners under quite a variety of headings; market information, financial news, failures and embarrassments, and ordinary current events of the trade; that would ordinarily be the classifications,—what shoe manufacturers are doing and what tanners are doing.

Q. 5. You publish financial news concerning the different——

A. That is one of the important departments of the journal.

Q. 6. Who collects and prepares the news?

A. The statements—the bulk of them are—you refer to the financial news, especially——

Q. 7. Yes.

A. Or all news?

Q. 8. Well, all news.

A. I devote considerable time to that myself. The financial statements are usually prepared from copies made from the State House and other various sources.

Q. 9. You mean copies that are on file in the State House?

A. Yes.

Q. 10. You say that you collect quite a bit of this news yourself, personally?

A. I spend the bulk of my time in interviewing members of the trade, and financial men, who are good sources of information.

Q. 11. Then you are in pretty close touch with the men in the shoe and leather trades, are you?

A. I spend the bulk of my time in that work.

Q. 12. Now, did you see and publish the McElwain statement of May 31, 1921?

A. Yes.

Q. 13. And you also saw and published the McElwain statement of November 30, 1921?

A. Yes.

Q. 14. Did you know the McElwain organization pretty well, personally,

A. I felt well acquainted with them; yes.

Q. 15. What was their situation in May 1921?

A. I believed it to be very extended, as far as debt was [fol. 355] concerned; and they were carrying, among other burdens, it seemed to me, matters in the way of contracts and agreements to purchase which were made on rather high markets.

Q. 16. You knew of the merger with the International Shoe Company, did you?

A. Yes.

Q. 17. Did you publish anything at that time about the merger?

A. We did; published quite fully on it.

Q. 18. Were you in pretty close touch with the trade at that time also?

A. Then, as now, I spent the bulk of my time in personal interviews.

Q. 19. Do you know the general attitude and feeling of the trade toward that merger?

A. I have not—in my recollection—heard it criticized from a standpoint of injury either to the competitive shoe manufacturers, or to the supply houses and leather trade who sell the manufacturers. The approval has been general, as far as I have been able to learn; and I have gone into that rather thoroughly.

Q. 20. Do you know the class of shoes that were being made by McElwain, and the class that were being made by the International Shoe Company?

A. I did; yes.

Q. 21. Was there any similarity or dissimilarity? And, if so, state what it was,—the essential differences.

A. The similarity would be that both were making lines of shoes for a very wide consuming public; and the dissimilarity would be—the outstanding feature of it would be the fact that the International were using better materials,—better construction,—pushing the "All leather" shoe, while the McElwain Company were very skillful in using substitutes for leather, generally believed to be not so good.

Q. 22. Is that a material distinction in the trade?

A. It is very material.

Q. 23. Now, take the policies of the two companies at that time as to stamping the names of the retailers in the shoes.

A. The policy of the McElwain Company was favorable, as I understand, to stamping the names of the retailers; while the International was exactly the opposite.

Q. 24. The International did not stamp?

A. It did not.

[fol. 356] Q. 25. Is that a material difference in the trade?

A. Well, it is a practice which is—each practice has a big volume, and I would say it is a material distinction; yes.

Q. 26. Mr. Gile, have you noticed any effect on the shoe business and the shoe trade in New England as the result of the acquisition of the McElwain by the International Shoe Company?

A. The difference in the trade is, plainly, making a more solid and more dependable shoe. More firms have specialized in the last three or four years in throwing out substitutes for leather,—leather board and similar inferior things to leather, and making an all-leather shoe.

Q. 27. Do you ascribe that to the fact that the International Shoe Company has come into this territory?

A. Yes, I would.

Q. 28. Do you know the general opinion of the trade as to whether or not there was competition between the W. H. McElwain Company and the International Shoe Company prior to the merger?

A. I believe that there was not a keen competition; there was a difference in territory and a difference in the character of the goods.

Cross-examination.

By Mr. Brindley:

X Q. 29. Were you ever a stockholder of the W. H. McElwain Company?

A. No, sir.

X Q. 30. How did you secure your information about its financial standing?

A. Part of my work is——

X Q. 31. Just answer the question; how did you secure your information that you have just testified to?

A. You mean previous to the merger?

X Q. 32. Yes, sir.

A. General contact with members of the trade who were interested in finance, and in the trade generally. That is part of our general inquiry.

X Q. 33. Did you ever examine the books of the W. H. McElwain Company?

A. In what period?

X Q. 34. Prior to and just before this stock was acquired by the International Shoe Company?

A. No, nothing but the balance sheets that were published.

X Q. 35. All your information is secured, then, by what [fol. 357] somebody else told you?

A. And balance sheets; yes. Personal information supplemented with balance sheets which I have read and published.

X Q. 36. You have no knowledge of its condition, yourself, except what you have been told, and the documents that have been given to you to examine, have you?

A. No.

X Q. 37. How did the W. H. McElwain Company rank in New England as a shoe manufacturing establishment, and dealer, in regard to size, capacity, and the like?

A. The number of pairs, you mean?

X Q. 38. Yes.

A. I should say they were among the three largest.

X Q. 39. In New England?

A. Yes.

X Q. 40. What three would you put into that class?

A. I should say Rice & Hutchins would be one of them, and A. G. Walton & Company, and George E. Keith.

X 41. Is McElwain larger or smaller than those you have mentioned?

A. In pairs?

X Q. 42. Yes; in capacity.

A. I should say they were the largest of the four.

X Q. 43. They were, then, the largest shoe manufacturing concern in New England?

A. Yes.

X Q. 44. And you say they manufactured quite a wide line of shoes?

A. I should say so; yes.

X Q. 45. Suitable for a number of different classes of people?

A. Yes.

X Q. 46. And could be sold over, as you stated, quite an extent of territory?

A. Yes.

X Q. 47. And it was in competition, as you say, to a limited extent with the International Shoe Company?

A. I would say so.

X Q. 48. And you mean, now, at the time its stock was acquired by the International Shoe Company?

A. I think my answer was that it was in competition in a limited degree.

X Q. 49. And you meant, of course, at the time its stock was acquired?

A. Yes.

X Q. 50. And before the time its stock was acquired?

A. Yes.

[fol. 358] X Q. 51. In your opinion, also, the International Shoe Company made a better shoe than the W. H. McElwain Company, did it?

A. What do you mean by better?

X Q. 52. Just what you mean. I understood you to state a moment ago that the International Shoe Company made a better shoe.

A. A more dependable shoe, I should say, and a better quality and more honest materials in it.

X Q. 53. Then you would class the International Shoe Company shoes as better shoes than those made by the McElwain Company?

A. I would; yes.

X Q. 54. Did you ever, yourself, purchase or wear any International Shoe Company shoes?

A. I don't know that I ever did; no.

X Q. 55. Have you ever seen them on sale?

A. Yes.

X Q. 56. Where?

A. What period are you speaking of now?

X Q. 57. Any time.

A. Well, I don't know that I could identify the stores at the present time. They are commonly seen in the windows, at the present time, of stores in New England,—general stores and retail stores; but to give you the firms' names or the street locations, I don't know that I could——

X Q. 58. I do not care to go into that definite detail.

A. Yes.

X Q. 59. But you do see them, now, quite generally throughout New England?

A. I am speaking of the present time; yes.

X Q. 60. To the best of your recollection how far back does that situation extend?

A. Well, in speaking of the International Shoe Company shoes I am talking largely of the shoes made by the McElwain Company since the merger; not shoes made in St. Louis, but shoes made in New England, seen in the stores of New England. Previous to that time I don't think I saw many International shoes in New England.

X Q. 61. Did you ever see any?

A. I would not say that I had.

X Q. 62. You were acquainted with the shoe, though, previous to what you call the merger, were you not?

A. Well, I stated that my work is not in the line of the retail shoe business; it is largely among shoe manufacturers and tanners. I am not reviewing the retail trade.

[fol. 359] X Q. 63. I know that. I just wanted to ascertain what your knowledge was about the situation of the two companies at the time of the transaction which you call a merger.

A. My impression is that I didn't see many International shoes in New England.

X Q. 64. At that time?

A. Before the merger.

X Q. 65. You have seen a great many since?

A. I have seen a great many either International or McElwain shoes, which would correspond to the McElwain production previous to the merger, perhaps.

Mr. Brindley: I think that is all.

Examiner Bennett: I just have one question. Have the McElwain methods of manufacture persisted since the merger?

The Witness: You refer to the materials in the shoe?

Examiner Bennett: The quality; yes.

The Witness: The quality has been changed to conform with the standards of the International Company of making a solid leather, more dependable shoe.

Examiner Bennett: I see; and referring to the McElwain shoes, then, you merely refer to the place of manufacture?

The Witness: In this last statement?

Examiner Bennett. Yes; that they were manufactured in the McElwain plant in New England.

The Witness. Yes, sir.

[Witness excused.]

William Adams Copeland was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Blake:

Q. 1. Mr. Copeland, state your name, address and occupation.

A. William Adams Copeland. Home address or business?

Q. 2. Business address.

A. 251 A Street, Boston; president General Shoe Machinery Company.

Q. 3. What kind of business does the General Shoe Machinery Company do, Mr. Copeland?

A. Principally selling shoe machinery.

[fol. 360] Q. 4. To shoe manufacturers?

A. Shoe manufacturers, and some others where the machines and findings are applicable to their trade.

Q. 5. In your business do you come in contact with the shoe manufacturers?

A. Yes.

Q. 6. Personally?

A. Yes.

Q. 7. Did you know the International Shoe Company prior to May 1921?

A. Yes.

Q. 8. And knew the W. H. McElwain Company prior to that time?

A. Yes.

Q. 9. Did you know of the combination of the two companies in May 1921?

A. I knew that they did combine at one time, about 1921.

Q. 10. Were you doing any business with the W. H. McElwain Company in May 1921, and prior thereto?

A. Yes.

Q. 11. What kind of business was it, Mr. Copeland?

A. Supplying shoe machinery and findings, and accessories.

Q. 12. You mean you were selling to them?

A. Selling to them yes.

Q. 13. Then you were a creditor of the W. H. McElwain Company at that time?

A. Yes.

Q. 14. As a creditor of the W. H. McElwain Company, did you know of the financial situation it was in in May 1921?

A. Not in detail, but I knew it in a general way, namely, that they were in rather a bad financial condition.

Q. 15. Well, from the standpoint of a creditor, what was your attitude toward the W. H. McElwain Company, or what was your view of it?

A. Not much attitude towards them, except in a very friendly way. I understood, about that time, that they were in financial difficulty, and that if they did not receive help, that they would have to go in the hands of a receiver.

Q. 16. Did they receive some help in May 1921?

A. That I could not tell you.

Q. 17. Well, you knew that the company—or the stock of the company—was sold to the International Shoe Company in May 1921?

A. Oh, yes; yes, I know that.

[fol. 361] Q. 18. Did you know the factories of the W. H. McElwain Company in the different towns?

A. Yes.

Q. 19. Personally?

A. Personally, almost from the start—from the inception of the company.

Q. 20. Did you know the quality of the shoes that the International Shoe Company were selling, and the quality that was sold by the W. H. McElwain Company?

A. In a general way; yes.

Q. 21. What was the quality—what was the difference in the quality between the two?

A. First, as to the reputation: the International had the reputation among the trade, and among my own agents, and so forth, that visited their factories, of making what is known as a solid shoe—a shoe that was built for wear; that was its first qualification. The McElwain Company had the reputation of building a shoe that was made to sell—that had a good finish, a good appearance. Many times the International shoe was not finished as well, and did not look as well, as the McElwain shoe; but it nearly always wore better. The shoe of the McElwain factories was a very highly finished shoe, the edges were highly polished and the bottoms nicely finished. I think the International had the habit of finishing their bottoms with what is called a "natural finish," and not buffing them, you know,—leaving the grain that will stand out; and McElwain did just the reverse. They had had the reputation of paint ng their bottoms. One was for the purpose of showing the material as it was, and the other was for the purpose of covering the defects. The McElwain Company painted their bottoms for the purpose of covering the defects. That was characteristic of McElwain shoes. A salesman once said to me that the McElwain shoes were made for smooth cement sidewalks, and the International shoes were made for the fields. That is not exactly true in all respects; but, as a general statement, I think there is considerable fact to it.

Q. 22. These differences in the construction of the two shoes,—are they material differences in the shoe business?

A. Why, yes; because they go to an entirely different class of trade,—in fact a distinctly different class of trade.

Q. 23. What was the policy of the shoe companies as to

[fol. 362] stamping the name of the retailer on the bottoms of the shoes?

A. I do not know.

Q. 24. Do you know whether or not the International Company stamped the names of retailers on the bottoms of their shoes?

A. No. I only know that the International shoe,—that is, the Roberts, Johnson & Rand shoe,—I don't know that I ever saw any of their shoes that Roberts, Johnson & Rand's name was not on them. I have reference to one particular shoe that I have known and seen particularly; that is a shoe that they used to call "Stronger than the law"; that is a name that attracted my attention.

Q. 25. That is a heavy work shoe?

A. I saw the shoes as they came into the factory, you know, to have forms made for them. I have to have sample shoes to make forms from; I make trees for them.

Q. 26. Mr. Copeland, you say you know of the acquisition, in 1921, of the W. H. McElwain Company by the International Shoe Company; and were you familiar with the communities in which the factories of the W. H. McElwain Company were located?

A. Most of them.

Q. 27. What would have been the effect on those factories and towns if the International Shoe Company had not acquired the McElwain Shoe Company?

A. You mean the International or somebody else that was to take care of their finances?

Q. 28. All right; put it that way if you want to; yes.

A. Why, they would, of course, have gone into the hands of a receiver, and gone into bankruptcy. I got that from what the officers of the McElwain Company told me.

Q. 29. What would have been the effect of that on the communities in which the factories were located?

A. Well, I suppose the same as in any communities where the employees of the factories were thrown out of work; it would have been distress for the time being, until the slack was taken up, and some other method of livelihood was found for these people. Of course a shoemaker is not quite as adaptable to other vocations as many other people, especially as a mill man, you know. The mill man becomes a shoemaker, but the shoemaker does not become a millman.

[fol. 363] A mill man going into shoemaking is going up; a shoemaker going into a mill man is going down.

Q. 30. Were your men constantly going into the factories of the W. H. McElwain Company in connection with your business?

A. Yes.

Q. 31. And you, at times, went in there yourself?

A. Yes.

Q. 32. Do you know in a general sort of way the production that the McElwain Company was making in April and May 1921,—that is, as to whether it was normal or less than normal?

A. I know that up to a certain time, about that time, they were running at full capacity; then they gradually began to taper off, and I made some inquiries as to why it was done, and I understood they were in financial difficulties. I could not tell you distinctly—I could not answer that question by the card. I know a concern that I was interested in was buying some sole leather of McElwain, and they were buying it at considerably below cost,—below what it could be obtained for in the open market; and I understood the reason of it was that they had to have immediate cash. I might say, if you wish me to interject anything,—is there any objection to it?

Mr. Brindley: Not yet.

Q. 33. Not yet, Mr. Copeland. You might go ahead and see.

A. Shall I?

Q. 34. Just go ahead, sir.

A. About that time,—I cannot tell whether 1921 or 1922, or when it is,—but along there,—I had a friend who had some stock in the McElwain Company,—Some preferred stock; and he came to my office to see me and told me that he understood that they were in trouble, and asked me about it. I found out as much as I could, and he asked me what to do; and I said, "I don't think there is anything to do except to hold your stock,"—I didn't think he could get very much for it,—and he did. When the International took them over,—I don't know how the transaction was, but I know the International took over McElwain,—I use that in a broad sense,—the fellow, in the meantime, had passed

away, and his brother came to see me and asked me what to do about the thing, and showed me a proposition that [fol. 364] he had had from the International Company or somebody representing the International Company. I had advised this man,—his name was Livingston Cushing,—I had advised him to purchase McElwain preferred stock, and I later became an adviser — the trustees under the will about the transfer from the McElwain to the International; because I told him that I thought the International would handle the business so that they would get a fair portion of their money back, if not all; that my acquaintance with the International had showed them to be merchants, and not mere shoe manufacturers; and I really felt that I was perhaps in a rather delicate capacity in making that advice. And the result was that several other stockholders came to me later, and I advised them the same way; and since that time they have nearly all thanked me for it. In that particular connection there was a neighbor of mine who owned a very considerable block of McElwain preferred stock,—not bought by my advice,—and in discussing the matter with me two or three times he said he was not going to make the exchange. I asked him why, and he said that he thought it was a freeze-out; that is the way he termed it. I told him I did not believe the International were in that position—I knew some of the officers very well—and in the course of a few months I saw the figures,—the McElwain figures,——

Q. 35. You mean the financial figures?

A. The financial figures, yes; and I made a mental note of it, and when I got back to my office I put them on paper and slipped them in my pocket, and when I happened to see this fellow walking up to the train one night, I showed them to him, and he said, "My God, I guess I will exchange my stock. If this thing had gone on this way, I would not have got more than 10 cents on the dollar." I said, "No, you would not." He did exchange his stock immediately, and several times has thanked me for giving him the exact information.

Mr. Blake: That is all.

Cross-examination.

By Mr. Brindley:

Q. 36. What lines of shoes were the W. H. McElwain Company making prior to the time its stock was acquired [fol. 365] by the International Shoe Company?

A. It was making men's shoes, I think; possibly a few boys'. I knew it was a factory for men's shoes.

X Q. 37. Did you ever wear a McElwain shoe?

A. No.

X Q. 38. Did you ever wear an International Shoe Company shoe?

A. No.

X Q. 39. What line of shoes was the International Shoe Company making at the time it acquired the McElwain Company stock?

A. A general line of shoes.

X Q. 40. Where did you secure your information about the lines that both companies were then making?

A. The McElwain Company, from personal observation; the International, in some instances from personal observation and in other instances from rumor,—a matter of general knowledge.

X Q. 41. What do you mean by "personal observation"?

A. In the McElwain factories,—from seeing the shoes in the factories.

X Q. 42. What about the International Shoe Company?

A. In this instance, from seeing the shoes in the factory, and from hearing about them.

X Q. 43. Did you ever see the shoes displayed for sale?

A. The McElwains, many of them. Not the International, only in one or two instances.

X Q. 44. Where were these one or two instances that you saw the International shoe displayed for sale?

A. In St. Louis, both instances. I think St. Louis is the only place I ever saw the International shoes for sale.

X Q. 45. Which was the better shoe, that made by the McElwain Company or the International Shoe Company?

A. There is about as much difference between a piece of real silk and a piece of mercerized silk, is as good a comparison as I could make.

X Q. 46. And according to the comparison, which made the mercerized?

A. It was the International Shoe Company that made the real silk shoe; and the mercerized was made by the McElwain,—but the mercerized,—the simile should be changed when you compare it as to wear; I was only speaking of the reality of the thing. Of course a silk article will [fol. 366] not wear as well as mercerized cotton,—there is no question about that,—but I was speaking about the reality of the thing, about the wearing quality.

X Q. 47. Were both shoes of fair wearing quality?

A. I think that McElwain had some shoes that were of fair wearing quality; the majority of their shoes were what was known as city shoes,—I think everybody spoke of them as city shoes,—that is, they had style. For instance, the McElwain Company had almost three times as many styles as the International; that is, they changed their lasts more quickly to conform to the fads of the city.

X Q. 48. To the changing fashions?

A. To the change, yes, in fashions.

X Q. 49. Were the shoes made by the McElwain Company suitable for wear by the average man?

A. That depends upon where the average man was going to wear them.

X Q. 50. Well, classing both you and myself as average men, what would you say?

A. Well, I think that depends on your sense of buying a shoe that was only attractive, or its attractiveness was greater than its wear.

X Q. 51. So on the standard, then, of the wear, using ourselves for examples, we would not buy the McElwain shoe?

A. No, I should not, because I should want one I could wear.

X Q. 52. How about the International Shoe?

A. I think they had some that were very attractive, but not as up to date as the McElwain.

X Q. 53. They would be suitable for you and me to wear?

A. I never wore one, but some of their shoes were high grade shoes; but they were always a shoe that was made to wear, first; the wear was always considered, in the construction; that is, so I have heard.

X Q. 54. Did you ever see the McElwain shoe and the International shoe sold in the same store?

A. No.

X Q. 55. How did the McElwain Company compare with other shoe manufacturing concerns in New England in size, capacity and so forth?

A. I think it was the largest manufacturer of shoes in New England.

X Q. 56. How did the International Shoe Company rank [fol. 367] at that time?

A. I assume that the International was the largest distributer of shoes in the United States, with the possible exception of Endicott-Johnson. I do not know their comparative capacities.

X Q. 57. What do you mean by "shoe distributers"?

A. Distributers and manufacturers.

X Q. 58. Confining it to manufacturing, then, would you say that the W. H. McElwain Company was the largest manufacturing company in New England?

A. I think so; yes.

X Q. 59. And the International Shoe Company is the largest shoe manufacturing concern in the United States?

A. I should say that. I may be wrong, of course.

X Q. 60. I think you are fairly accurate. You were speaking a few minutes ago of the distressing effect that would have happened if the W. H. McElwain Company had gone into bankruptcy, or something like that. You recall that, do you?

A. I do.

X Q. 61. The W. H. McElwain Company did not go into bankruptcy, did it?

A. I assume not.

X Q. 62. So that the lugubrious situation that you pictured was all speculative, was it not?

A. It was quite real to me at the time, when there was the thought of it; but, of course, it was a potential situation.

X Q. 63. Wasn't it purely speculative on your part as to what would have happened if something else had not happened?

A. No; I do not think it is speculative at all. That is, if you asked me the question,—if you asked what the effect would have been if the McElwain Company had gone into the hands of a receiver, I don't think there is such speculation as to that effect.

X Q. 64. I do not think you were asked that question. I understood you to be basing your answer on what would have happened if the International Shoe Company had not acquired the stock of the W. H. McElwain Company?

A. Almost synonymous, aren't they? Who else would have acquired it, if the International Shoe Company had not? The banks would have had to close them out, and you know what the effect of closing out of a large shoe industry, with all the factories centered within a few miles of each other, is.

[fol. 368] X Q. 65. How did you know that the International Shoe Company was the only concern in the world that could acquire the McElwain?

A. I did not.

X Q. 66. You didn't know that, then?

A. No; I didn't know that they were.

X Q. 67. Then you are basing it all on an "if"; that if somebody had not acquired the McElwain Company, and if it had gone into bankruptcy, then the results might have been disastrous. Isn't that your statement?

A. Yes.

X Q. 68. Now, you didn't mean to say that you know that the McElwain Company would have gone into bankruptcy if the International Shoe Company had not acquired its stock, do you?

A. No——

X Q. 69. No, of course not.

A. Except that some large syndicate would have had to come forward with a great many millions of dollars, and take them over.

X Q. 70. Certainly.

A. And if they hadn't done it,—if they hadn't done it, they probably—any syndicate probably would not have been able to market the large volume of merchandise that the McElwain Company had, without seriously affecting the shoe and leather market, and all the kindred industries.

X Q. 71. Now, as you have just stated, you were basing your conclusions on probabilities, were you not?

A. Of course. It is the potential in all these—all answers, in all these questions.

X Q. 72. So you are speculating as to what would have happened at that time, if something else had happened?

A. In a sense, yes; but at that time I was speculating what would have happened to the money of my company, if they had broke.

X Q. 73. Yes; but they didn't break, did they?

A. No, they certainly did not.

X Q. 74. How did that second friend of yours that you were talking about come out on his stock deal?

A. He got one hundred cents on the dollar, as I understand it.

X Q. 75. What was his name?

A. Farwell Bemis.

X Q. 76. Where does he live?

A. Boston.

[fol. 369] X Q. 77. He did not lose anything, then, in the stock transaction, did he?

A. Not at all.

X Q. 78. And you were one of the creditors of the McElwain Company at the time, were you?

A. Yes, sir.

X Q. 79. And you didn't lose anything, did you?

A. Not a dollar.

Mr. Brindley: I think that is all.

Redirect examination.

By Mr. Blake:

Q. 89. In your cross-examination, in response to Colonel Brindley's question as to which was the better shoe for you and for him to wear, and in speaking of the International Shoe Company's shoe being the better shoe, I will ask you if you were not thinking of the actual intrinsic value, based on an actual knowledge of the construction of the two shoes?

A. Yes.

Q. 81. In other words, you knew what the construction of the McElwain shoe was, and you knew what the construction of the International Shoe Company's shoe was?

A. Yes; that is true.

Q. 82. Does that apply to the ordinary run of the citizens of the United States? Do they know the actual construction of the shoes they are buying in retail shoe dealers' stores?

A. No; the average citizen, I think, does not know the construction of the shoe, except from trial. The McElwain had the reputation, about that time, of being an irregular and somewhat—what is called a "shoddy" shoe; that is, the counters were imitation leather, and they were putting in slip soles of imitation leather or very cheap leather, and the heels were not solid leather, or not good solid leather; so much so that the retailers often, in the large cities, were complaining of the McElwain shoes and rejecting them in large quantities, on account of just that thing. They seemed to have no standard of construction, which the International had,—and that is really the soul within a business, in the shoe business, is the standard of construction lived up to.

Mr. Blake: That is all, Mr. Copeland.

Recross-examination.

By Mr. Brindley:

X Q. 83. You stated that at that time a large number of retail dealers were rejecting the McElwain shoe?

A. Rejecting and complaining about them; yes.

[fol. 370] X Q. 84. What shoe were they taking on in place of the McElwain shoe?

A. Why, I should imagine they were taking on shoes from the manufacture all over the country, more or less, and particularly from people around here.

X Q. 85. Can you name a few that they would take, in place of these McElwain shoes they were leaving?

A. No; I don't think I could.

X Q. 86. What concerns are in this New England section that were competing with the McElwain shoes?

A. Oh, any number of people in Brockton, Haverhill and Lynn—all over the country.

X Q. 87. Well, give the names of the manufacturers.

A. I suppose Isaac Prouty & Company and the Groat Shoe Company; I mean by that, there are any quantity of manufacturers that are making shoes in this district.

X Q. 88. You mean similar to the shoes made by McElwain?

A. Yes; but they were making a little better shoe, as a rule.

X Q. 89. Well, now, it is just the names of these manufacturers that I want to get.

A. That is something that I cannot give you right off the bat.

X Q. 90. You stated a moment ago that W. H. McElwain Company is the largest shoe manufacturing company in New England?

A. Oh, yes; no question about that.

X Q. 91. Now, who are some of its principal competitors?

A. Well, I cannot name you, right off-hand, who their principal competitors were.

X Q. 92. Would you call the W. L. Douglas Shoe Company a competitor?

A. No; I think the W. L. Douglas Shoe Company made a better shoe.

X Q. 93. Than the McElwain shoe?

A. Yes.

X Q. 94. How about the Clapp shoe? Do you call the Clapp shoes in competition with the McElwain shoe?

A. The Clapp shoe is a very high-grade shoe,—$10 shoe. McElwain, in his men's shoe, is in almost a class by himself; that is, he made shoes in very large quantities, and he sold them— I don't know what the selling price was, particularly, but he made shoes in very large quantities [fol. 371] and kind of monopolized one class of trade about here.

X Q. 95. What class was that?

A. That is a cheap shoe.

X Q. 96. A cheap shoe?

A. Yes.

X Q. 97. Did it sell at about the same price as the International shoe?

A. I don't know; some factories of the International Shoe, I imagine, might turn out about the same as McElwain.

Mr. Brindley: That is all.

Examiner Bennett: I want to ask just a question or two. Was the McElwain Company reputed to have an efficient management at any time in its history?

The Witness: At any time when?

Examiner Bennett: In its history.

The Witness: Oh, yes.

Examiner Bennett: It was regarded as an efficiently managed and solvent company, was it?

The Witness: The McElwain Company for many years was regarded as the most efficiently managed concern in the world.

Examiner Bennett: When was the turn in the management?

The Witness: I should say shortly after W. H. McElwain died.

Examiner Bennett: When was that?

The Witness: I could not tell you that date.

Examiner Bennett: Well, approximately.

The Witness: Oh, ten years ago.

Mr. Rand: I can answer; it was in 1908.

The Witness: It ran along, as I understand it, under a certain momentum for a great many years with his ideals.

Examiner Bennett: And was it his successors who turned to that idea of making shoddy goods and glossing them over with a fine finish?

The Witness: Oh, yes, I think so.

Examiner Bennett: And that was one factor in their final difficulty, was it not?

The Witness: I should say that making goods that did not wear well is always a factor in the downfall of a con-
[fol. 372] cern; but the lack of a standard of manufacture, properly lived up to, was possibly the greatest factor.

Examiner Bennett: Do you say, then, that inefficient management was a considerable factor in getting them into their difficulties?

The Witness: Yes, I should say that. I should answer that "Yes", in a general way, because of their not living up to a standard of production.

Examiner Bennett: With that name, as the name existed in the early part of its history,—if the persons interested in it could have secured a change of management, they might have saved it?

The Witness: In the early part of its history, yes.

Examiner Bennett: I see.

The Witness: I don't think anything could have saved it in the last few months.

Examiner Bennett: Yes, I see. Concerns like yours, with very large credit to the lines of shoe manufacturers,

and banks with lines of credit, had a very large interest at that time in the situation, I presume.

The Witness: Most decidedly.

Examiner Bennett: You probably would have taken some pretty positive steps to try to meet the situation, as it became critical, would you not?

The Witness: I should have taken some protective steps.

Examiner Bennett: That is all.

[Witness excused.]

CLIFFORD P. WARREN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct Examination.

By Mr. Blake:

Q. 1. Mr. Warren, will you state your name, address and occupation?

A. Clifford P. Warren; 26 Park Street, West Roxbury; lawyer.

Q. 2. Are you also president of the W. H. McElwain Company?

A. Yes.

Q. 3. Were you president of the W. H. McElwain Company in June, 1923?

A. Yes.

[fol. 373] Q. 4. Have you a copy of the by-laws of the W. H. McElwain Company?

A. Yes, sir [producing two bound volumes].

Mr. Blake: I have not any intention of introducing any part of the by-laws, but I have them here for your reference, Mr. Brindley, because you asked about them in St. Louis.

Q. 5. Have you here the minutes of the stockholders' meeting of the W. H. McElwain Company held on June 20, 1923?

A. Yes, sir.

Q. 6. Will you look at these minutes, Mr. Warren, and give us a statement as to what occurred in that stockholders' meeting?

A. I don't know how much detail you want. The president stated that all of the classes of stock were entitled to vote at the meeting. The minutes were read of the annual stockholders' meeting which had been held in January, and of certain meetings of the directors, and a vote was passed confirming the acts and proceedings of the board of directors set forth in those minutes. Then the statement was made by the president that certain stock of the company was in the treasury of the company, and that the holders of certain other stock had offered that stock for cancellation; and that both groups of stock, that in the treasury and that offered, might well be retired and cancelled. A vote was therefore passed reducing the stock of the company by the retirement and cancellation of the stock which was in the treasury and of the stock which was offered for cancellation. Then the meeting adjourned for fifteen minutes, by vote, until the articles of amendment with respect to the reduction of the stock could be properly filed with the secretary of the Commonwealth, in accordance with the law. The meeting was resumed, and it was stated that these articles of amendment had been filed at the State House, so that the reduction had become legally effective. The president then presented to the meeting two offers from the International Shoe Company for the purchase of the property and assets of the McElwain Company, and a vote was adopted accepting the second of these two offers and authorizing the board of directors to carry out the terms of the offer and the acceptance. A vote was then passed directing the board of directors, when the com-
[fol. 374] pany had disposed of its property and assets, to distribute the purchase price as a liquidation dividend, and then to liquidate and dissolve the corporation in such manner as the board of directors should determine. The meeting was adjourned to a later date, and then again to a still later date, and then was finally adjourned, and at neither of the adjournments was any business at all transacted.

Q. 7. Now, Mr. Warren, this was not a regular meeting?

A. This was a special meeting.

Q. 8. This was a special meeting of the stockholders?

A. It was.

Q. 9. Was the legal notice as required by the by-laws of the company given to the stockholders?

A. It was.

Q. 10. The proceedings were regular in every respect, were they?

A. As far as I could make them so.

Q. 11. Mr. Warren, who was the largest stockholder at this stockholders' meeting?

A. Bennett, Limited.

Q. 12. Who was there representing Bennett, Limited?

A. Pierre Bonin.

Q. 13. Is Pierre Bonin a real person or a fictitious person?

A. A real person.

Q. 14. Did he take part in the meeting?

A. He did.

Q. 15. Did he vote in the meeting?

A. He did.

Q. 16. Do you know where the certificates of the stock of the W. H. McElwain Company are at the present time,—the certificates of stock held by Bennett, Limited?

A. I believe I do. Of course, we cannot be sure what has been done with them; they were sent by me to Bennett, Limited.

Q. 17. Mr. Warren, did the International Shoe Company actually pay the W. H. McElwain Company for its assets?

A. They did.

Q. 18. How?

A. By check.

Q. 19. Did you receive that check?

A. Yes.

Q. 20. Did you deposit that check, and get the money to the account of W. H. McElwain Company?

A. I did.

[fol. 375] Q. 21. What became of the money, Mr. Warren?

A. Most of it was distributed by way of liquidation dividends.

Q. 22. Now, Mr. Warren, did you make any attempt to sell the assets of W. H. McElwain Company to others than the International Shoe Company?

A. Letters were written to two other parties, asking whether they would wish to bid for the property.

Q. 23. Have you those letters here?

A. I forgot to bring them, I am sorry to say. I can send them over, or get them here otherwise.

[Brief recess.]

The Witness: I now produce the letters.

Q. 24. I will ask you if you can identify the sheet of paper that you have in your hand?

A. That is a copy of the letter to Lee, Higginson & Company referring to the offer of the International and asking whether they wish to make an offer themselves.

Q. 25. What is the date of that letter?

A. June 8, 1923.

Q. 26. By whom was it sent?

A. Myself.

Q. 27. That letter was actually sent to Lee, Higginson & Company?

A. It was.

Mr. Blake: I offer that as Respondent's Exhibit 41.

[Letter, June 8, 1923, W. H. McElwain Company to Lee, Higginson & Company, marked "Respondent's Exhibit 41".]

Q. 28. In this letter did you mention both offers that had been received from the International Shoe Company?

A. Yes, sir.

Q. 29. I notice in this letter that you state that these offers are based upon the book value of the assets of the company as of April 19, 1923, plus $500,000. I will ask you if the International Shoe Company subsequently amended their offers in any respect?

A. They amended them by increasing the consideration to be paid, under each, by the sum of $1,000,000.

Q. 30. Did you receive a reply from Lee, Higginson & Company?

A. Yes.

Q. 31. I will ask you if you can identify that as the reply [handing witness a paper]?

A. That is the reply.

Mr. Blake: We offer that as Respondent's Exhibit 42.

[fol. 376] [Letter, June 15, 1923, Lee, Higginson & Company to C. P. Warren, marked "Respondent's Exhibit 42."]

Examiner Bennett: Exhibits 41 and 42 may be received in evidence.

Q. 32. I hand you another sheet of paper and ask you if you can identify that?

A. That is a letter to Mr. Eben H. Ellison, to much the same effect as the letter to Lee, Higginson & Company.

Q. 33. Written by whom?

A. Written by myself.

Q. 34. As president of the W. H. McElwain Company?

A. Yes.

Q. 35. Dated——

A. June 12, 1923.

Mr. Blake: We offer that as Respondent's Exhibit 43.

Examiner Bennett: It may be received.

[Letter, June 12, 1923, W. H. McElwain Company to Eben H. Ellison, marked "Respondent's Exhibit 43."]

Q. 36. Who is Mr. Eben H. Ellison, to whom this letter was directed?

A. He is a hide and leather dealer in Boston.

Q. 37. Of what standing, financially?

A. Very high standing, indeed.

Q. 38. Did you receive a reply from Mr. Ellison?

A. I did. This is the reply [producing a letter].

Mr. Blake: We offer that as Respondent's Exhibit 44.

Examiner Bennett: It may be received.

[Letter, Eben H. Ellison to W. H. McElwain Company, marked "Respondent's Exhibit 44."]

Q. 39. I note that that letter mentions the fact that Mr. Ellison has discussed the matter carefully with Mr. Prescott; who is the Mr. Prescott referred to?

A. Mr. Prescott is a gentleman who lives in Norwood, and who was formerly vice-president of the McElwain Company, and who was at that time and is now connected with Mr. Ellison in business.

Examiner Bennett: Is that Charles J. Prescott?

The Witness: It is.

Q. 40. Mr. Warren, the offer of the International Shoe Company which was accepted by W. H. McElwain Company was accepted in a stockholders' meeting, was it not?

A. It was.

Q. 41. Will you read from the minutes of the stock-[fol. 377] holders' meeting the mandate or direction which was given to the directors by that stockholders' meeting as to carrying out the transaction?

A. The vote was a long one, with the first whereas, "The following offer has been received,"—and quoting the offer at length. The second whereas is to the effect that the stockholders consider that the acceptance of the offer is to the interest of the company and its stockholders. Then, therefore, voted that the company accept the offer; and I think that the part of the vote to which you refer is that the board of directors of the W. H. McElwain Company "be and it hereby is authorized and instructed to carry out, on behalf of the company, and through such officer or officers as the board may designate, the terms of such offer and acceptance, including the conveyance of all property of the company, real, personal and mixed."

Q. 42. Did the directors subsequently meet?

A. They did.

Q. 43. How soon thereafter?

A. Immediately after the stockholders' meeting?

Q. 44. And what was the action in the directors' meeting?

A. The directors voted that "Clifford P. Warren, president of the W. H. McElwain Company, be and hereby is authorized and instructed to carry out, on behalf of the company, the terms of said offer and acceptance, and to execute such conveyances, contracts and other instruments as to him may seem necessary or desirable in connection therewith; and it is further voted that the said Clifford P. Warren, president of the company, is specifically authorized and instructed to execute an agreement of conveyance in writing, dated June 20, 1923, which has been presented to this meeting, between this company and International Shoe Company, and also the deeds of conveyance which have been presented to this meeting of the lands and buildings of the W. H. McElwain Company situated at Manchester, Merrimack, Newport, Claremont, and Keene, New Hampshire; and at Windsor, Vermont; and the assignments which have

been presented to this meeting of the leases to W. H. McElwain & Company of the lands and buildings in the City of Manchester, and in Boston, Massachusetts, and in the City of New York."

[fol. 378] Q. 45. Mr. Warren, are these records of the directors' and stockholders' meetings of June 20, 1923, full and complete records of the transactions that took place there?

A. They are.

Q. 46. Subsequent to this directors' meeting, were conveyances executed conveying the properties to the International Shoe Company?

A. They were.

Q. 47. Who prepared those instruments of conveyance?

A. I did.

Q. 48. All of them?

A. I believe you prepared the blanket conveyance or agreement, which is specifically referred to in the vote of the directors. As far as I recall,—and I think I am correct,—all other conveyances and assignments were drawn by me.

Q. 49. When were they drawn?

A. Most of them were drawn before the stockholders' meeting.

Q. 50. Of June 20, 1923?

A. Of June 20, 1923.

Q. 51. By whom were you compensated for your services in the preparation of these conveyances?

A. By checks which came from the International Shoe Company.

Q. 52. Why was the International Shoe Company paying you for the preparation of these conveyances?

A. The conveyances were drawn for the McElwain Company, of course, the grantor. I was acting under an agreement with the McElwain Company for my services for the year 1923. International Shoe Company, by the terms of the sale, assumed all obligations of the W. H. McElwain Company and its contract; so that it would naturally assume the agreement for my compensation as well. In addition to that, one of the terms of the offer was that International Shoe Company would pay all the expenses of liquidation and dissolution of the McElwain Company.

Q. 53. Mr. Warren, to your knowledge have any of the stockholders of W. H. McElwain Company complained as to this sale of the assets to International Shoe Company?

A. They have not.

Q. 54. Has any attack, from any source, been made on the legality of the sale?

A. Not to my knowledge.

Q. 55. What do you know of the transactions between Bennett, Limited, and International Shoe Company, under [fol. 379] which Bennett, Limited, acquired the large bulk of the capital stock of W. H. McElwain Company?

A. I know that they purchased it from International Shoe Company for a certain price, and that the price was paid, and the stock was delivered.

Q. 56. What connection did you have with the transaction?

A. I had no connection with the preliminaries in any way. After the agreement had been made for the sale of the stock I was employed by Bennett, Limited, merely to see that the stock was actually delivered, and that it was protected in the passing of the papers; but in the negotiations preceding the transfer of the stock and the paying of the price, I had nothing whatever to do.

Q. 57. In acting in this matter for Bennett, Limited, did you charge and receive from them a fee for your services?

A. Yes.

Q. 58. Mr. Warren, prior to this stockholders' meeting of June 20, 1923, had the stockholders of W. H. McElwain Company taken any action—do your minutes show anything with reference to the dissolution of W. H. McElwain Company?

A. They do.

Q. 59. Will you refer to these minutes and give us the information?

A. At the annual meeting of the stockholders held January 25, 1923, as appears on page 320 of the minutes, it was voted: "That the board of directors of W. H. McElwain Company be and hereby is authorized and directed to prepare a plan for the sale or disposal of all the assets of the company and for the liquidation and dissolution of the company, and to present such plan to an adjourned session of this meeting, and all stockholders, for consideration and action." At the adjourned session of the same meeting,

March 26, 1923, the following took place as appears on page 327 of the minutes: "The chairman of the meeting then read the resolution passed at the meeting of January 25, 1923, authorizing the board of directors to prepare a plan for the sale or disposal of all the assets of the company, and for the liquidation and dissolution of the company, and to present such a plan to an adjourned session of that meeting for consideration and action. The chairman reported in behalf of the board of directors that the board had taken the matter under consideration pursuant [fol. 380] to the resolution of the stockholders, and had made some progress, but was not yet ready to report."

Q. 60. Will you identify the document that you have there in your hand?

A. That is a carbon copy of the minutes of the stockholders' and directors' meetings of June 20, 1923. In order to have an accurate copy for Mr. Blake, I made it by carbon at the same time I dictated the minutes on to the loose leaves for the minute book.

Q. 61. It, then, is an exact copy of the minutes of the stockholders' meeting and the directors' meeting of June 20, 1923?

A. Yes, sir.

Mr. Blake: We offer that as Respondent's Exhibit 45.

[Carbon copy of minutes of stockholders' and directors' meeting, June 20, 1923, marked "Respondent's Exhibit 45."]

Q. 62. You made some corrections of typographical errors?

A. Yes, sir.

Examiner Bennett: It may be received.

Q. 63. Will you refer to your minutes of stockholders' meeting there and see how many other shares,—that is, shares other than the shares owned by Bennett, Limited, were present and voted at the meeting?

A. At the opening of the meeting there were present certain holders of second preferred stock who had not turned in their stock for cancellation after the first one or two votes, so that the stock was not outstanding and voting at the time of the acceptance of the International offer.

Q. 64. Now, at the time of the acceptance of the International offer, what stockholders other than Bennett, Limited, were present and voted?

A. Edward L. Prescott, Charles J. Prescott, Frederick B. Smith, C. S. Howland and myself.

Q. 65. What class of stock was held by these persons that you have named?

A. Common stock.

Q. 66. How did they acquire that stock, if you know?

A. Why, my recollection is that they all received it from International Shoe Company.

Q. 67. What was the money value of that common stock at that time?

A. Nothing.

[fol. 381] Q. 68. What other value did it have?

A. None, as far as I know.

Q. 69. Did it have any value as to voting?

A. It had voting rights; yes; but of course it constituted only an exceedingly small minority.

Q. 70. The big majority being stock held by Bennett, Limited?

A. Yes. The stock I spoke of numbered eight shares.

Q. 71. Eight shares, as against how many held by Bennett, Limited?

A. Of the first preferred, 69,946, and of the common, 491.

Mr. Blake: That is all.

Examiner Bennett: Will you just turn there to the number of shares that were voted at that meeting of common?

The Witness: You mean, of course, on the offer of International Shoe Company?

Examiner Bennett: At that meeting, if any.

The Witness: On the first vote to reduce the capital stock a great deal more stock was voted. Then a great deal of it was surrendered and cancelled, and then the remaining stock was voted on the International offer.

Examiner Bennett: And what was that?

The Witness: 65,445.

Examiner Bennett: How many shares of common?

The Witness: Wait a minute, I am wrong here. 70,445; and 499 common.

Examiner Bennett: 499. The preferred stock had voting rights, did it?

The Witness: Yes, at this time.

Mr. Blake: This 70,455 you mean is both preferred and common?

The Witness: Exactly; the entire amount of stock voted on this International offer was 70,445.

Mr. Blake: That is all.

Cross-examination.

By Mr. Brindley:

X Q. 72. Who is Clare S. Howland, whose name I see signed to these minutes?

A. My secretary.

[fol. 382] X Q. 73. Where is she at the present time?

A. In Boston.

X Q. 74. Still your secretary?

A. She is.

X Q. 75. At work in your office?

A. She is.

X Q. 76. Was Clare S. Howland an officer of the W. H. McElwain Company in June, 1923?

A. Yes; she was a director and clerk.

X Q. 77. Anything else?

A. I think she was treasurer also.

X Q. 78. Do you recall when she was elected treasurer?

A. I don't recall. I could find it in the minutes.

[Witness examines minutes.]

X Q. 79. When was she elected treasurer?

A. June 6, 1923.

X Q. 80. At a special meeting of the board of directors of W. H. McElwain Company?

A. Board of directors.

X Q. 81. When did the stockholders first authorize the board of directors of W. H. McElwain Company to prepare a plan for the sale and disposition of the assets of the company?

A. January 25, 1923.

X Q. 82. And nothing was ever done in regard to that plan, except to report as read under date of——

A. March 26——

X Q. 83. —1923.

A. Unless it may be said that the transactions in June were in pursuance of it. I don't know whether it may be or not.

X Q. 84. It was on March 26, 1923, that the chairman reported on behalf of the board of directors that the board had taken the matter under consideration, but were not yet ready to report?

A. True.

X Q. 85. So, if anything at all was done under that, it was not done until in June, 1923?

A. It was not done in March. What was done between March and June is another matter.

X Q. 86. In March 1923 the board was not ready to report any plans?

A. True.

X Q. 87. Who owned the stock of W. H. McElwain Company on January 25, 1923?

A. I presume it stood in the name of either Stanley King, or Stanley King and Mr. McElwain as joint tenants or tenants in common. I do not believe any of it stood in the [fol. 383] name of International Shoe Company. I believe it was either in Mr. Rand's name, or Mr. King and Mr. McElwain's name.

X Q. 88. But, as a matter of fact, International Shoe Company owned all the stock of W. H. McElwain at that time?

A. They did not own all, but they owned that which you refer to.

X Q. 89. How much of the stock outstanding was owned by parties other than the International Shoe Company?

A. I would find it difficult to state the precise situation without looking at the records, at any particular moment. The amount owned by other parties in January 1923 was exceedingly small.

X Q. 9. It was practically the same situation that it was June 20, 1923, was it not?

A. Probably there was some stock purchased between January and June. In fact, I know there was some acquired between those dates.

X Q. 91. Mr. F. C. Rand was president of the W. H. McElwain Company in January 1923, wasn't he?

A. I think he was.

X Q. 92. I see, in this minute book to which you have referred, just preceding the beginning of the notice and minutes of this special meeting of the stockholders of June 20, 1923, the statement which purports to give the names of the record holders of the stock in W. H. McElwain Company at the time of this meeting of June 20, 1923.

A. Yes, sir.

X Q. 93. Is that a correct statement of the names of the stockholders, and the amount held by them?

A. It is so certified by the Old Colony Trust Company to be a correct statement of the record holders at that time.

X Q. 94. You were president of the company at that time, were you not?

A. Yes; but with regard to the record holders, I have to take the word of the transfer agent.

X Q. 95. How many of the stockholders whose names appear there as holders of first preferred, second preferred and common stock of W. H. McElwain Company really owned the stock standing in their names?

A. Well, I will tell you. Of the first preferred stockholders I believe all owned the stock standing in their names. Of the second preferred stockholders, I presume that, aside from the McElwain Company, none of them [fol. 384] owned the stock standing in their names.

X Q. 96. To whom did it belong?

A. Undoubtedly Bennett, Limited, at that time, I think—yes, undoubtedly it belonged to Bennett, Limited, at that time.

X Q. 97. And all of the second preferred?

A. Yes.

X Q. 98. And how about the common?

A. The common,—Bennett, Limited, owned the stock in its name; I should say Miss Howland owned the stock in her name; the McElwain Company owned its stock; McElwain and King, joint tenants,—that undoubtedly belonged to the International; Mrs. Nash, Mr. Prescott, Mr. Edward Prescott, Mr. Rand, Mr. Smith, Mr. Warren and Mr. Wigglesworth owned their stock.

X Q. 99. Did you own the stock in your name?

A. Yes, sir.

X Q. 100. How many shares did you own?

A. Four shares.

X Q. 101. What did you give for it?

A. Nothing.

X Q. 102. Where did you get it?

A. International Shoe Company.

X Q. 103. Then it belonged to International Shoe Company, didn't it?

A. No.

X Q. 104. Didn't you hold it merely to hold as qualifying shares?

A. I didn't have any obligation to give it back, in any way.

X Q. 105. I didn't ask you if you had any obligation to give it back; didn't you hold it simply to give you in your name a qualifying share?

A. I could not say so.

X Q. 106. How about the other parties you have mentioned in here? Didn't they hold it as holders of qualifying shares only?

A. I don't know.

X Q. 107. Well, how about your secretary who owned one share? She didn't buy that share and pay for it, did she?

A. She did not.

X Q. 108. So the share she held belonged to the International Shoe Company, didn't it?

A. I could not say that it belonged to the International Shoe Company.

X Q. 109. To whom did it belong?

A. These certificates are not endorsed in blank, and are [fol. 385] in my possession at the present time; and there was no obligation whatever to return those shares.

X Q. 110. And there was no consideration given for them?

A. No consideration given; no, sir.

X Q. 111. When were you first elected president of the W. H. McElwain Company?

A. It is difficult for me to say that without refreshing my recollection. I should say June 6, 1923, but I will verify that immediately.

X Q. 112. Can you refresh it from this book?

A. [Witness referring to minute book.] May 31, 1923.

X Q. 113. Who suggested that you be elected president of the company?

A. I do not recall.

X Q. 114. How did the suggestion come up?

A. I do not recall that either.

X Q. 115. Do you know what caused the vacancy in the office of president?

A. I believe it was because of the resignation of the former president.

X Q. 116. Who is he?

A. Mr. Rand, I think.

X Q. 117. Do you know why he resigned?

A. I don't know; no.

X Q. 118. You know, do you not?

A. Why, of course we can all assume; but I would not say that I knew finally. If you want what I think the reason was, I will tell you.

X Q. 119. All right; tell us, then. You know why he resigned, go ahead and tell it.

Mr. Blake: The witness prefers to testify to what he knows, and not to any assumption.

Mr. Brindley: He seems to be willing to testify.

A. I had no talk with Mr. Rand, in any way, so I do not know.

X Q. 120. When did you first hear that any complaint had been issued in this case by the Federal Trade Commission?

A. I should say some time in May.

X Q. 121. Before Mr. Rand resigned?

A. Yes.

X Q. 122. You knew that complaint was in existence before you were elected president?

A. Yes, I did.

X Q. 123. And you knew all these performances were [fol. 386] brought about by reason of the complaint that had been issued by the Federal Trade Commission?

A. No; I would not say that.

X Q. 124. When did you first hear of the offer of International Shoe Company to purchase the property of the W. H. McElwain Company?

A. Some time in May, I believe.

X Q. 125. May of what year?

A. 1923.

X Q. 126. How did you hear of it?

A. I would say that probably Mr. King spoke to me about it, in the first instance.

X Q. 127. Probably?

A. Yes, sir.

X Q. 128. Well, did he submit the offer to you?

A. Yes.

X Q. 129. How was it submitted?

A. I cannot recall at what time it was submitted in writing. I knew that it was on the way, and at some time it came to me in the form of a letter.

X Q. 130. Do you know what time it came to you in the form of a letter?

A. No, I do not.

X Q. 131. Can you give an idea as to the date?

A. I should say it was probably before the notice was sent out, and before the letters were written; but just the date I could not say.

X Q. 132. Now, what is the date of your first letter?

A. June 6,—or June 8, I should say; June 8 it is.

X Q. 133. June 8, 1923?

A. Yes.

X Q. 134. So you knew of an offer, then, at least on June 8, 1923, didn't you?

A. Oh, yes; yes.

X Q. 135. What was the second offer of the International Shoe Company which you fix on June 6?

A. The second of the two offers?

X Q. 136. Yes.

A. The second one was to pay a certain amount for the property and assets; and, in addition, to assume the liabilities.

X Q. 137. What was that certain amount of money to be paid?

A. $3,063,125.89.

X Q. 138. And that is also the sum mentioned in your letter of June 12?

A. It is.

X Q. 139. What was the amount of the offer submitted at the special stockholders' meeting on June 20?

A. $1,000,000 more than that, I believe.

[fol. 387] X Q. 140. When was the sum increased?

A. My recollection is it was only a few days before the meeting.

X Q. 141. How was the increase offered?

A. I don't recall whether it was by a letter or orally that that was first spoken of.

X Q. 142. Have you the records of the W. H. McElwain Company in your office?

A. I presume I have most of them.

X Q. 143. Well, was this offer, now, of $4,063,125.89 in writing or made orally?

A. That must have been in writing.

X Q. 144. Will you look for that record?

A. I will.

X Q. 145. And produce it to us tomorrow?

A. I will.

X Q. 146 At least, then, on June 12, 1923, there had been no change in the offer?

A. Yes.

X Q. 147. It simply stood at the original figure, $3,063,-125.89?

A. Yes.

X Q. 148. And was voluntarily increased on or before June 20?

A. Yes.

X Q. 149. By 1,000,000 more?

A. It was.

X Q. 150. When did Bennett, Limited, purchase the stock of W. H. McElwain Company which you have registered in these minutes as standing in the name of Bennett, Limited?

A. I could not give you the exact date, there. The records of the transfer agent would show when it was transferred on the books.

X Q. 151. You wrote up those minutes, did you?

A. Yes.

X Q. 152. You do not know, then, when Bennett, Limited, became the owner of the stock registered in its name, and listed in these records?

A. I do not.

X Q. 153. This meeting of June 20, 1923, was a special meeting of the stockholders and directors, was it?

A. Yes.

X Q. 154. Who called that meeting?

A. I did.

X Q. 155. When did you call it?

A. I have not the date in mind; I should say it was around the first part of June.

X Q. 156. Well, your best recollection as to the date—when did you call it?

A. The date is on the call. As a matter of recollection, I should say early in June.

X Q. 157. Will you examine the record and tell me when you called that special meeting?

[fol. 388] A. [Witness examines record.] June 11.

X Q. 158. June 11; was this notice or call for the special meeting of June 20, 1923 sent to all the stockholders?

A. It was.

X Q. 159. Was a notice sent to Bennett, Limited?

A. It was.

X Q. 160. Did you send that notice to Bennett, Limited?

A. I did.

X Q. 161. And under date of June 11, 1923?

A. Well, that is the date of the call. I would not say the notice was sent that day,—I do not know. It was sent within at least the legal time before the meeting.

X Q. 162. What is the legal time?

A. Seven days.

X Q. 163. Seven days?

A. Yes.

X Q. 164. So you are positive, then, that you sent notice of this special meeting of stockholders to Bennett, Limited, at least seven days before June 20?

A. I would not be sure for this reason: If Bennett, Limited, did not acquire its stock seven days before, the notice could not have been sent seven days before. It was sent to Bennett, Limited, after it became a stockholder.

X Q. 165. Then you don't know whether it was sent to Bennett, Limited, or not?

A. Oh, yes. I would say I don't know whether it was sent seven days before; our practice is to send notices to those who are stockholders seven days before, and then send notices to those who become owners between those dates.

X Q. 166. What stock did Bennett, Limited, acquire?

A. I assume it acquired the stock held by International Shoe Company.

X Q. 167. Did it acquire the stock held in your name?

A. No.

X Q. 168. Did it acquire the stock held in the name of your secretary?

A. No.

X Q. 169. What stock did it acquire?

A. The stock held in the name of King and McElwain, joint tenants, and, I presume, some of the stock held by Mr. Rand personally.

X Q. 170. So, if notice had not been sent to Bennett, Limited, it would be sent to King and Rand?

A. It would be sent to stockholders of record seven days before that meeting.

[fol. 389] X Q. 171. And J. Franklin McElwain?

A. It was sent to them if they were stockholders of record seven days before the meeting.

X Q. 172. As a matter of fact, you don't know to whom you sent the notices, do you?

A. I could not tell you, this minute, whether they were stockholders of record or not. It was sent to all persons who were stockholders of record seven days before, and then to those who subsequently became stockholders of record.

X Q. 173. Those who became stockholders within the seven day interim?

A. Yes, so that all should have the notice.

X Q. 174. At the special meeting on June 20, 1923, the offer of International Shoe Company to pay $4,063,125.89 for the assets and properties of the company was accepted, was it?

A. Yes.

X Q. 175. Was the money paid?

A. It was.

X Q. 176. How?

A. Check.

X Q. 177. To whom?

A. W. H. McElwain Company.

X Q. 178. What disposition was made of that check?

A. Deposited.

X Q. 179. Where?

A. National Bank of Commerce, New York.

X Q. 180. When?

A. June 21, 1923.

X Q. 181. What other transactions had the W. H. McElwain Company had at the National Bank of Commerce

in New York, prior to the depositing of the check there of the International Shoe Company?

A. I don't know, because I was never treasurer of the company, or acquainted with its financial transactions.

X Q. 182. You had been over there to New York prior to June 20, hadn't you?

A. I had not. I never was inside the National Bank of Commerce to my knowledge.

X Q. 183. Had your secretary been over there?

A. No.

X Q. 184. Had she had any transactions with the Natonal Bank of Commerce?

A. No.

X Q. 185. Had the treasurer of W. H. McElwain Company had any transaction with the National Bank of Commerce, New York?

A. I don't know about previous treasurers,—treasurers prior to my secretary. It might have been one of the banks of deposit of the company, but I do not know.

X Q. 186. What is the meaning of this statement in the [fol. 390] minutes of the special meeting of the board of directors of June 30, 1923: "Voted, that the action of the treasurer of W. H. McElwain Company in opening an account in the name and on behalf of the company with the National Bank of Commerce of New York is hereby ratified, confirmed and approved"?

A. I presume there must have been an account opened in New York.

X Q. 187. By your secretary?

A. It must have been opened in her name. I had not recalled that, but very possibly it had been opened before.

X Q. 188. You wrote these minutes, of course?

A. I did.

X Q. 189. And you wrote this excerpt that I just read?

A. Yes.

X Q. 190. Now, you have the books,—the bank book and check book of W. H. McElwain Company?

A. No, I have not all of them; no.

X Q. 191. This treasurer of the company, you say, is Miss Clare S. Howland?

A. I have the papers with regard to this particular account, if that is what you are mainly interested in, which will show the transactions that took place with the National Bank of Commerce.

X Q. 192. You will produce those tomorrow?

A. Yes, I will have them here tomorrow if you wish.

X Q. 193. Can we have your secretary?

A. Yes. Of course she acted as my secretary, and I do not think she would contribute much to the knowledge, but she can be here.

X Q. 194. Most of the knowledge was contributed by you?

A. Yes.

X Q. 195. If she opened an account with the National Bank of Commerce in New York, of course that was done because you instructed it, was it not?

A. It was.

X Q. 196. If she borrowed any money over there, it was done because you directed it, wasn't it?

A. Yes.

X Q. 197. At this meeting of June 20, 1923 you were president of W. H. McElwain Company?

A. Yes.

X Q. 198. And also its general counsel, I believe, and employed by it for the year?

A. Yes.

X Q. 199. Then you also represented Bennett, Limited?

A. Yes.

[fol. 391] X Q. 200. In that transaction?

A. Yes.

X Q. 201. I believe you just testified that Bennett, Limited, compensated you for your services?

A. Yes.

X Q. 202. And you also represented International Shoe Company?

A. No.

X Q. 203. What was that about your compensation coming from International Shoe Company?

A. That was paid by them on account of W. H. McElwain Company. My contract for compensation was with W. H. McElwain Company, and was for the entire year of 1923, and International Shoe Company was making pay-

ment on that matter by its own checks, just as it paid other McElwain obligations.

X Q. 204. And it just paid the McElwain obligation to you for the year 1923?

A. Yes.

X Q. 205. You received a stated salary?

A. From month to month.

X Q. 206. You didn't receive anything extra because of that contract?

A. I received extra compensation on account of the extra time required in that month. My contract with the McElwain Company, in writing, stipulated that I should have a certain retainer; and if the amount of time in any particular month exceeded what would be normally expected, and interfered materially with my other business, we would adjust the difference between us in the way of an additional fee. That had been my contract with W. H. McElwain Company for two years.

X Q. 207. And that part was simply paid by International Shoe Company?

A. Paid by the International.

X Q. 208. Who paid your expenses to New York?

A. My expenses were simply added to the bill which I sent to the McElwain Company once a month.

X Q. 209. The offer of International Shoe Company was accepted June 20, 1923, was it?

A. Yes.

X Q. 210. And you went to New York on June 21, 1923?

A. Yes.

X Q. 211. You had not been there on this transaction prior to the 21st of June?

A. I had not; no.

[fol. 392] X Q. 212. And had not visited the National Bank of Commerce in connection with it?

A. I had not.

X Q. 213. I see in the minutes of the special meeting of the board of directors of June 20, 1923 this statement: "Voted, that checks upon the account of W. H. McElwain Company in the National Bank of Commerce of New York may be signed in the name and on behalf of the company by either one of Clifford B. Warren, president, or C. S. Howland, treasurer." On June 20, the date of that recital in

the minutes, you had not been to the National Bank of Commerce?

A. I had not.

X Q. 214. The W. H. McElwain Company had no account there on that date, as far as you know?

A. I wish to amend that testimony, because I now recall what I think was true; an account had been opened,—I don't know who did it, whether Mr. King or someone else; not myself, personally. I might have done it by letter,—my papers will show that. It slipped my mind in some way, but an account had been opened in the National Bank of Commerce, and a deposit had been made of $1,000 to open the account.

X Q. 215. Can you look that up?

A. I will have the records here tomorrow morning. I think there was no other business with the bank, except the deposit of straight $1,000 to open the account. Who did that, the records will show, as I say.

X Q. 216. When the meeting of the stockholders of W. H. McElwain Company convened on June 20, 1923, there were 69,946 shares of the first preferred stock represented as present?

A. True.

X Q. 217. Is that true?

A. Apparently.

X Q. 218. And 51,997 of the second preferred stock?

A. True.

X Q. 219. And 69,839 shares of the common stock?

A. True.

X Q. 220. And during that meeting 1,419 shares of the first preferred stock, 2,000 shares of the second preferred stock, and 104 shares of the common stock which had not been issued, and were in the treasury of the company retired, were they?

A. I think all of that stock had been issued, and reacquired by the corporation.

[fol. 393] X Q. 221. If it had ever been——

A. If it had ever been issued, it had been reacquired.

X Q. 222. And was what you call "treasury stock"?

A. Yes.

X Q. 223. That treasury stock, then, was retired and cancelled?

A. Cancelled.

X Q. 224. And then certain other stock, namely, 52,000 shares of second preferred stock, 69,346 shares of common stock, were offered to the company for retirement, cancellation and extinguishment?

A. Yes, sir.

X Q. 225. Who offered that stock to the company?

A. I believe I can state the people from the records,—from that list of stockholders at that time in whose names the stock stood. Most of it, undoubtedly, if not all—probably most of it was International stock.

X Q. 226. This does not recite who owned this stock; it says the owner offered it, and just says the amount of the shares.

A. Yes.

X Q. 227. But you think it was International Shoe Company?

A. Most of it was International Shoe Company.

X Q. 228. Most of it?

A. Yes. There may have been one or two shares held in other names.

X Q. 229. What other names, for instance?

A. The second preferred stock was all International stock. The 52,000 shares, I believe, was all International. Of the common stock, 69,346 shares, undoubtedly 69,340 stood in the name of the International, and those of the others, the records would show which,—but there were six in the remaining shares. Bennett, Limited, was left in the meeting, and there were six shares left outstanding.

X Q. 230. That left four shares to you, Clifford P. Warren, one share to C. S. Howland, and one share to Edward J. Prescott, one share to Charles J. Prescott, and one share to Frederick B. Smith; so they cancelled the four shares in your name——

A. Wait a minute. No, none of those shares represented at the meeting other than by the International were among those retired. The stock retired was all common stock that was not represented at the meeting, except the 69,340; [fol. 394] the 69,340 was turned in; and Julia M. Nash, one; Frank Rand, special account, six. I think that makes the total.

X Q. 231. That makes 347 instead of 346 as recited in the minutes.

A. There may have been one of those left out. The shares that were in my hands were retired at that time.

X Q. 232. Just another little discrepancy in the record?

A. No, that would undoubtedly be correct; I would vouch for the accuracy of that. It is the question of whose stock it was, that is all; but none of the people present at the meeting submitted their stock to be retired except Stanley King and J. Franklin McElwain, joint tenants.

X Q. 233. Where was this special meeting of June 20, 1923 held?

A. At 590 Atlantic Avenue.

X Q. 234. And when the stock was cancelled as recited in these records, was any document filed in the office of—

A. It was filed at once.

X Q. 235 (continued). —the Secretary of the Commonwealth?

A. It was.

X Q. 236. Who filed it?

A. Stephen S. Rossiter.

X Q. 237. Who is he?

A. The gentleman here [indicating a gentleman in the hearing room].

X Q. 238. What is he,—an attorney?

A. No, sir; an employee of the McElwain Company.

X Q. 239. And he was present at the meeting?

A. I don't believe so. He was sent as the messenger from the meeting to the State House to file the paper.

X Q. 240. How far is it from where the meeting was held to the State House?

A. By taxicab, it is not over five minutes.

X Q. 241. The meeting adjourned how long for him to get there?

A. Fifteen minutes, and he telephoned from the State House that he had filed it.

X Q. 242. So the document evidencing the change in the status of the stock was prepared before the meeting?

A. It certainly was.

X Q. 243. Who prepared it?

A. I did.

[fol 395] X Q. 244. So you knew the action would be taken?

A. Yes, sir.

X Q. 245. Is that also the reason that you prepared some of the deeds for the property to be conveyed by W. H. McElwain Company to the International Company?

A. I assumed action might be taken which would require those deeds.

X Q. 246. And therefore you had the deeds ready?

A. Exactly.

X Q. 247. And that was deeds under the second offer?

A. Yes.

X Q. 248. They were prepared like these—

A. The same deeds would have to be used, whether it was under the first or second offer. It would not affect the deeds in any way.

X Q. 249. And they were made to International Shoe Company?

A. Yes.

X Q. 250. And you knew the International Shoe Company offer would be accepted?

A. I assumed it might.

X Q. 251. How much money did W. H. McElwain Company secure from the International Shoe Company?

A. The price specified in the vote.

X Q. 252. $4,063,125.89?

A. Yes, sir.

X Q. 253. Was that turned over to you?

A. By check.

X Q. 254. And you deposited it in the National Bank of Commerce, New York?

A. I did.

X Q. 255. What disposition did you make of it?

A. I checked out a certain amount of it as liquidating dividends to Bennett, Limited.

X Q. 256. Tell me about that certain amount of liquidating dividend; that is what I am interested in.

A. It was the amount which would be per share about $58 and some odd cents, which we estimated to be its share of the liquidation dividend.

X Q. 257. You gave a check, then, to Bennett, Limited?

A. Yes.

X Q. 258. For its share of the proceeds of this sale of the assets?

A. Yes.

X Q. 259. What was the total amount of that check?

A. I don't remember exactly.

X Q. 260. Can you figure it up a little bit and tell me?

A. I should say approximately $4,000,000.

[fol. 396] X Q. 261. A little more than that?

A. Well, it would be a little more than that; yes.

X Q. 262. Can you examine this record as to what the rate was to each stockholder and then tell me the amount of the check—

A. I think they will so state. I am not sure. [Examining record.] $58.060414 to each share of stock.

X Q. 263. Examine the record—

A. I have pointed out that per share price——

X Q. 264. Now, tell me, as best you can, the amount of the check that was issued to Bennett, Limited.

A. It was in excess of $4,000,000. That is all I can say.

X Q. 265. Can you not figure it more accurately than that?

A. Not in my head.

X Q. 266. Here is the record——

A. I can take a piece of paper, but I cannot figure it in my head. The National Bank of Commerce papers that I will show you tomorrow will state.

X Q. 267. Take all the time you want to and figure it.

A. My computation, which perhaps needs an accountant's verification, is $4,061,093.72.

X Q. 268. That is your computation as to the amount of the check given to Bennett, Limited?

A. Yes, sir.

X Q. 269. I think you are exactly correct, to a cent. What balance was left in your hands after the check to Bennett, Limited?

A. I should say $2,032.17.

X Q. 270. What disposition did you make of that amount?

A. That was deposited with the Old Colony Trust Company, as I remember it, for the remaining holders of the preferred stock.

X Q. 271. And what is the difference there that you just gave me?

A. $2,032.17.

X Q. 272. And that, you say, was deposited with the Old Colony Trust Company?

A. Yes.

X Q. 273. When was it deposited with the Old Colony Trust Company?

A. Immediately after the 21st; I would say within a week afterwards.

X Q. 274. About the next day?

A. Yes, very quickly; it might have been a day later, but it was fairly in the near future.

[fol. 397] X Q. 275. And deposited with the Old Colony Trust Company to go to——

A. The remaining preferred stockholders.

X Q. 276. Do you know who they were?

A. Seth Beale, five shares; Miss Florence A. Bearse, five shares; Miss Elizabeth Daniels, four shares; Elliott Norton, executor, six shares; Prospect Hill Cemetery Association, ten shares; Frank H. Stewart, trustee, five shares.

X Q. 277. Is that all?

A. Yes.

X Q. 278. Did any of this $2,032.17 go to anybody else?

A. I don't believe so.

X Q. 279. Have you any stockholder there in that list that was holding out,—insisting on a little more, or anything like that?

A. That is, holding out now?

X Q. 280. No; at the time of this transaction of June 20, 1923.

A. I don't think that any one of these stockholders were what you would call "holding out". They were all people who had not turned in their shares—had not made the exchange with the International, but I don't know that with any of them there had been any argument or correspondence.

X Q. 281. You didn't know there was any one man holding out at all, did you?

A. I know there was one of the common stockholders was.

X Q. 282. Who was he?

A. Edward Wigglesworth.

X Q. 283. What became of him?

A. I know nothing, except that his stock was afterwards turned in. I do not know what the circumstances were.

X Q. 284. You don't know who acquired it?

A. No.

X Q. 285. Nor who paid for it?

A. I say I don't know; my understanding is that the International Shoe Company acquired it.

X Q. 286. You didn't?

A. I didn't; no; I had nothing to do with it.

[Hearing adjourned to 10 a. m., Tuesday, June 17, 1924.]

[fol. 398] Boston, Mass., June 17, 1924.

[Met pursuant to adjournment, 10 a. m.]

X Q. 287. Mr. Warren, you stated yesterday that you were regularly employed or retained by the W. H. McElwain Company in 1923 as attorney?

A. Yes.

X Q. 288. How long have you been so employed by the W. H. McElwain Company?

A. I first went with the company in January of 1910.

X Q. 289. As an attorney?

A. As general counsel.

X Q. 290. And have you been so connected with them from 1910 until the transactions in June, 1923?

A. I have.

X Q. 291. And you are a practicing attorney in the City of Boston?

A. I am.

X Q. 292. That has been your only business or profession?

A. It has.

X Q. 293. At the time that you were connected with W. H. McElwain Company you acted as its counsel in all matters necessitating the services of an attorney, did you?

A. I would not say that I acted as counsel in all matters. There may have been some, particularly at a distance where other attorneys were employed, often perhaps with

my knowledge, but sometimes perhaps without. I did as a matter of fact what was given me to do.

X Q. 294. And you were familiar with the business of the company?

A. I was familiar with those matters which were brought to my attention.

X Q. 295. All things connected in a legal way?

A. In a legal way I was familiar with it.

X Q. 296. Were you a director?

A. I was not a director until 1923.

X Q. 297. How long were you a stockholder?

A. I presume I owned—it is hard to say when I first became a stockholder. I imagine I held stock nearly from the outset.

X Q. 298. How much stock did you hold?

A. Varying amounts. I could not tell you.

X Q. 299. What was the largest amount you ever held?

[fol. 399] A. From memory it would be difficult to say. I should say that probably a little over 200 shares, speaking roughly, was the largest amount.

X Q. 300. Was that given to you to hold, or did you actually purchase it?

A. That was all bought.

X Q. 301. The stock held in 1923 and when you were president was simply stock standing in your name?

A. The stock that I owned at the time of this transaction was given to me; yes.

X Q. 302. You did not pay anything at all for it, did you?

A. No.

X Q. 303. And never have?

A. No.

X Q. 304. What became of that stock in your name when this liquidation proposition that you have told about took place in June, 1923?

A. The stock that was given to me?

X Q. 305. Yes?

A. I still have it.

X Q. 306. The McElwain Company has not been dissolved?

A. It has not.

X Q. 307. It is still in existence as a corporation?

A. It is.

X Q. 308. Did you attend annual meetings of the W. H. McElwain Company, and also special meetings and the like?

A. Yes.

X Q. 309. When were you elected president of the company?

A. My recollection is that it was the last of May or the first of June, but I cannot be positive without looking at the records. [Examines record.] May 31, 1923.

X Q. 310. You were elected to the presidency to succeed Mr. F. C. Rand, who had resigned?

A. Yes, sir.

X Q. 311. What other officers of the W. H. McElwain Company resigned about the time that Mr. Rand resigned?

A. Mr. George Hutchinson as director and member of the executive committee resigned at that same meeting.

X Q. 312. Who was elected to succeed him?

A. Clare S. Howland.

X Q. 313. What other resignations took place, and when?

A. June 6 Mr. Matless resigned as director and member of the executive committee, and Mr. Shaw as director and [fol. 400] vice-president; and in their places were elected Mr. Smith and Miss Nash as directors.

X — 314. Mr. Smith, did you say?

A. Mr. Smith and Miss Nash as directors, and Mr. Smith as a member of the executive committee. Mr. King resigned as director and member of the executive committee, and treasurer and vice-president, and I resigned as clerk and secretary. Then Miss Meserve was elected as director. E. L. Prescott was elected as member of the executive committee. Clare S. Howland was treasurer, clerk and secretary. [Examines minutes.] Apparently that is all.

X Q. 315. What was the occasion of these resignations which you have just recounted?

A. I don't believe I could state positively.

X Q. 316. Well, if you cannot state positively, tell me what you do know. You know why they resigned.

A. No, I cannot say that I know why they resigned. They did; that is all.

X Q. 317. That was the first intimation you had of the resignations, at the time that you showed up at this meeting, when the resignations were presented?

A. I presume I was told in advance that they were to resign.

X Q. 318. By whom?

A. I believe by Mr. King.

X Q. 319. Do you know why they were to resign, and why they did resign?

A. I might have been told—no, I would not say that, because Mr. Hutchinson had been on the point of resigning for some time.

X Q. 320. Who is Miss Dorothy Meserve?

A. She is secretary of Mr. C. J. Prescott at the present time.

X Q. 321. Had he been one of the officers or directors of the W. H. McElwain Company?

A. He was not at that time but was once.

X Q. 322. Is he the gentleman who discovered Pierre Bonin?

A. He is the gentleman who was acquainted with Mr. Bonin.

X Q. 323. And brought him to the attention of your Mr. King?

A. I would not put it that way.

X Q. 324. How would you put it?

A. I would say that Mr. Bonin we had known for several years.

[fol. 401] X Q. 325. How long have you known Mr. Bonin?

A. I presume I have known him for six years.

X Q. 326. What business is he engaged in?

A. He is with Bennett, Limited.

X Q. 327. What is Bennett, Limited, doing?

A. Engaged in the manufacture of leather board.

X Q. 328. What was Mr. Bonin doing over here in June 1923?

A. He was over here voting on the stock of the Bennett, Limited, in W. H. McElwain Company.

X Q. 329. Do you know of any other business that he had over here?

A. I do not.

X Q. 330. Where is he now?

A. I don't know. He lives in Canada.

X Q. 331. Have you seen him since June 1923?

A. I don't think I have seen him, except on one occasion I met him casually and shook hands with him, and said "How do you do?", and that is all.

X Q. 332. You have had no business dealings with him since June 1923?

A. No.

X Q. 333. Mr. King informed you that he would resign as vice president and treasurer?

A. I believe so.

X Q. 334. Did he give you any reason for it?

A. I don't remember whether he did or not.

X Q. 335. Do you know his reason for resigning?

Mr. Blake: I think Mr. King is probably more competent to testify on that.

Mr. Brindley: Possibly so. And he has testified. But I want to see what this particular witness knows. He is the gentleman I am interested in just now.

Mr. Blake: I have no objection to his testifying along this line. Of course we have nothing to hide, but I think you probably ought to get the best evidence of such things.

Mr. Brindley: If you think Mr. King's evidence is the best, it is in the record already, but I am trying to ascertain what this witness knows and what he will tell.

Mr. Blake: So far as I am concerned, you are at liberty to go on.

[fol. 402] Mr. Brindley: All right. We will proceed on that line.

A. To the best of my recollection he probably intimated that his resignation was in view of the fact that an offer was coming from International Shoe Company, and that he would rather have other directors and officers at the time.

X Q. 336. That he would rather have what?

A. Other directors and officers of the McElwain Company at the time.

X Q. 337. The offer from the International Shoe Company had not been received by the McElwain Company at the time you are now speaking about?

A. The McElwain Company may have had it. I don't know. I forgot at what precise date that offer was received. It undoubtedly had been intimated that an offer was on the way.

X Q. 338. You don't know when you first saw that offer?

A. No, I do not.

X Q. 339. Have you any offer with you today? The original of it, or the copies?

A. I have the final form of both offers [producing papers].

X Q. 340. The final form of offer you mention is dated June 4, 1923?

A. True.

X Q. 341. But you did not have that or know about that offer until about the middle of June 1923, did you?

A. To the best of my recollection I did not have that precise offer; no.

X Q. 342. You had an entirely different offer, didn't you?

A. Not entirely different.

X Q. 343. Why wasn't it entirely different? There was $1,000,000 difference, wasn't there?

A. That was the only difference.

X Q. 344. And of course $1,000,000 does not mean anything in the way of difference to you?

A. That is only one respect in which it was different. In other respects it was the same.

X Q. 345. $1,000,000 is a small matter?

A. That is one important respect, but only one respect.

X Q. 346. In the notice which you sent out for the special stockholders' meeting of June 1923, you recited in that notice among the reasons for calling the meeting was to consider an offer in the sum of $3,063,125.89, didn't you?

A. Yes.

[fol. 403] X Q. 347. And yet the offer which you say you had, which was dated June 4, 1923, was for $1,000,000 more?

A. I did not have that particular offer at the time that notice was sent out.

X Q. 348. Do you mean this offer [showing paper to witness] dated June 4, 1923?

A. Yes.

X Q. 349. Where is the offer which you did have at that time?

A. I don't know.

X Q. 350. Was it destroyed?

A. I don't know.

X Q. 351. What became of it?

A. I don't know.

X Q. 352. It was sent to you as president, was it?

A. Yes. It may be in the files.

X Q. 353. Did you look for it last night or this morning?

A. No; I did not know you wanted it.

X Q. 354. I think I asked for all the papers. Where is the stock book of the W. H. McElwain Company?

A. In the possession of the Old Colony Trust Company.

X Q. 355. Then you don't know where this offer is, this $1,000,000 less than the one dated June 4, 1923?

A. No.

X Q. 356. What caused the change in that offer by which it was increased $1,000,000?

A. I don't know of my own knowledge.

X Q. 357. Who does know?

A. Mr. Frank C. Rand.

X Q. 358. Is he the only one?

A. Others may know, from what he told them.

X Q. 359. What was the occasion for the surrender and cancellation of a large block of stock at the special meeting of June 20, 1923?

A. One reason was that the stock was of no monetary value, and it would simplify the organization to have it out of the way. The holders were willing to surrender it, thus reducing the amount of that stock materially. I am not positive that it also did not obviate transfer tax stamps on that stock. There was no need of transferring it or selling or disposing of it. If it was so disposed or sold it would take transfer tax stamps, and it could not be sold for that amount.

X Q. 360. And so you considered that worthless anyway?

A. Yes,—that is, the holders did.

[fol. 404] X Q. 361. Would that same rule apply to the stock held by Bennett, Limited?

A. The common stock; yes.

X Q. 362. How about the other stock?

A. The preferred stock had a value. The first preferred stock had a value.

X Q. 363. And that was by far the largest class held by Bennett, Limited?

A. Yes.

X Q. 364. There were 1,419 shares of first preferred stock cancelled and retired in June 1923, also, were there not?

A. Yes.

X Q. 365. That was worthless as well?

A. Yes.

X Q. 366. In fact there was no stock worth anything except that which Bennett, Limited, held?

A. No; that is not true.

X Q. 367. What is true?

A. Any preferred stock had a value except that the first preferred stock held by the company had no value at that time. The company could not receive a liquidation dividend on its own stock.

X Q. 368. So that the stock held by Bennett, Limited, with a few other shares outstanding, constituted all the stock that was worth anything?

A. The first preferred stock in the hands of persons other than the company constituted all the stock that was worth anything.

X Q. 369. Well, that is pretty general, isn't it?

A. No; that is correct.

X Q. 370. All right. Let us get the actual names and amounts held by those who held first preferred stock, which had a value. Will you recite the names for me, with the amount of stock held by each?

A. Seth Beale, guardian, five shares; Mrs. Florence A. Bearse, five shares; Bennett, Limited, 69,946 shares; Mrs. Elizabeth Daniels, four shares; Eliot Norton, executor, six shares; Prospect Hill Cemetery Association, ten shares; Frank H. Stewart, five shares.

X Q. 371. That makes a total of how many shares?

A. 69,981 shares.

X Q. 372. It shows here a total of how many [referring to record book]?

A. 71,400.

X Q. 373. Bennett, Limited, held 69,946 shares?

A. Yes.

X Q. 374. Of the valuable stock?

A. Yes, sir.

[fol. 405] X Q. 375. Did W. H. McElwain Company itself hold 1,419 shares?

A. Not of the valuable stock, because in its own hands of course it had no value.

X Q. 376. It was of the same class, the first preferred, wasn't it?

A. To be sure.

X Q. 377. And the other persons you have named held 35 shares?

A. Yes, 35 shares.

X Q. 378. So that the first preferred stock held by Bennett, Limited, and the other 35 shares is the only stock that had any value?

A. Yes.

X Q. 379. And that particular stock was worth how much?

A. It depends on the basis on which you take it.

X Q. 380. Well, your basis.

A. On the basis of the price which was received for the property, it was worth $58 and some cents a share.

X Q. 381. Which amounts to how much?

A. Something over $4,000,000.

X Q. 382. $4,063,125.89, to be exact?

A. Yes; that is true.

X Q. 383. When did Bennett, Limited, buy the stock of W. H. McElwain Company, which is registered in its name here?

A. I don't know.

X Q. 384. You were president of the company?

A. Yes, of the McElwain Company.

X Q. 385. It was the stock of the McElwain Company that Bennett, Limited, bought?

A. But naturally the transfer would not come to the attention of the company until the stock was submitted for transfer.

X Q. 386. What was it you said yesterday about being employed by Bennett, Limited, in connection with the transfer?

A. That was to see that the stock was transferred; not when the purchase was made.

X Q. 387. Did you see that the stock was actually registered?

A. Yes.

X Q. 388. Or transferred on the books?

A. Yes.

X Q. 389. When was that done?

A. In the neighborhood of June 15, I should say.

[fol. 406] X Q. 390. How can you ascertain definitely?

A. I may have some letter in the file indicating definitely that day.

X Q. 391. Will you look for that during the noon recess, so that you can tell us this afternoon?

A. I will look for it; yes.

X Q. 392. Was Mr. Stanley King present at this special meeting of June 20, 1923?

A. Yes.

X Q. 393. Throughout the entire meeting?

A. Yes.

X Q. 394. Participating in it?

A. He participated in the first part of it, voting on stock that was afterward retired.

X Q. 395. He went into the meeting as a stockholder?

A. Yes.

X Q. 396. And came out as a spectator?

A. Yes.

X Q. 397. You were present throughout all that meeting?

A. Yes.

X Q. 398. And the offer of the International Shoe Company was accepted on that date?

A. Yes.

X Q. 399. And the resolution passed by the company as disclosed in the copy of the minutes you identified?

A. Yes.

X Q. 400. When did the International Shoe Company pay for that purchase of McElwain assets?

A. June 21.

X Q. 401. Where?

A. New York.

X Q. 402. How did it make the payment?

A. By check.

X Q. 403. To whom was it given?

A. To me.

X Q. 404. What did you do with it?

A. Deposited.

X Q. 405. Where?

A. National Bank of Commerce.

X Q. 406. What was the amount of that check?

A. The amount named in the offer.

X Q. 407. All right. They put the amount of that check, then, to the credit of the W. H. McElwain Shoe Company?

A. Yes.

X Q. 408. What was your next step as president of the W. H. McElwain Shoe Company?

A. I presume in point of time a check was given to Bennett, Limited, in payment of its liquidation dividends.

X Q. 409. Was any other check given in payment of liquidation dividends on that day?

A. Not that day.

X Q. 410. Were any other checks for liquidation given on the account deposited with the National Bank of Commerce in New York?

[fol. 407] A. The amount of the remaining liquidation dividends was in one check paid to the Old Colony Trust Company.

X Q. 411. For distribution among the other holders of first preferred stock?

A. Yes.

X Q. 412. Did you see Mr. Pierre Bonin at the National Bank of Commerce, New York City, on June 21?

A. Yes.

X Q. 413. What was he doing there?

A. Representing Bennett, Limited.

X Q. 414. What disposition did he make of his liquidation check?

A. I don't know.

X Q. 415. Have you ascertained since adjournment yesterday anything about that account that the treasurer of the W. H. McElwain Company opened at the New York Bank of Commerce?

A. Yes, sir.

X Q. 416. Tell us about it now.

A. That was opened by letter from me to the National Bank of Commerce dated June 14, 1923——

X Q. 417. Let me see the letter.

A. [Witness produces.]—with which I enclosed check for $1,000 to open the account.

X Q. 418. Who signed this letter?

A. I did.

X Q. 419. That account, then, was opened by yourself?

A. It was.

X Q. 420. And not by the treasurer?

A. It was. That is right.

X Q. 421. What is right?

A. That letter was signed by me and the account was opened by me.

X Q. 422. And not by the treasurer?

A. True.

X Q. 423. Then the recital in the minutes that the treasurer opened that account is incorrect?

A. I would not say it was incorrect. The treasurer would naturally open the account and I, acting for the treasurer, opened the account.

X Q. 424. The treasurer did not open the account in this instance?

A. I acted for the treasurer in that regard.

X Q. 425. You did not act as president, then?

A. I did not sign that letter as president.

X Q. 426. Mr. Warren, just tell me frankly what was the occasion for the sale of the stocks of the W. H. McElwain Company as you have recited, the making and accepting of the offer from the International Shoe Company, [fol. 408] and the transfer or pretended transfer of the assets and property.

A. The transfer of the assets or the sale of the assets to somebody had been in contemplation for a very long time. You will see that it was definitely in contemplation, or some such plan, in January, and it probably had been in contemplation before that time, although not appearing as a matter of record. Just why it was done in June rather than at some later date I do not know that of my own knowledge I am qualified to say. The sale of the stock was a matter the negotiations for which I had nothing to do with. So what was in the minds of the International Shoe Company in buying the stock there again I cannot tell you of my own knowledge; I was not consulted. The transfer of the assets was actual and not pretended.

X Q. 427. You don't know anything about the occasion for all this transaction, however, you have stated?

A. I was not consulted as attorney for the International Shoe Company in this matter.

X Q. 428. I don't ask you whether you were consulted as attorney.

A. And therefore of my knowledge I knew nothing about that.

X Q. 429. You don't mean to say that the only way you have of deriving information is when you are consulted as attorney, do you?

A. No.

X Q. 430. I am anxious to know what you know regardless of how you learned it. Tell me what was the occasion of this transfer.

A. The transfer was anticipated in any event. I would make a clear distinction between the transfer and the time of the transfer. The transfer would naturally come about, and we had anticipated it for a considerable length of time. Mr. King had discussed the question, and when we would do it, and we had delayed making some such arrangement merely until we should have more of the outstanding stock properly taken care of. So that that was naturally in our minds. Now I presume that that is what you want me to say, that the actual time of the transfer may have been expedited by the Trade Commission proceeding.

[fol. 409] X Q. 431. Don't you know that it was?

A. I merely assumed that that was probably so.

X Q. 432. You say that you and Mr. King had discussed this proposed transfer for a number of times?

A. Yes.

X Q. 433. That was a proposed transfer to the International Shoe Company, wasn't it?

A. It was assumed, it was understood, that the only people who would have any interest in acquiring the property would be the International Shoe Company.

X Q. 434. Certainly. And they were the ones to whom it was to be transferred?

A. If we had had a better offer I think we would not have transferred it to them.

X Q. 435. Whom do you mean by "we"?

A. The officers.

X Q. 436. Do you mean you and Mr. King?

A. If I had been treasurer and a director of the company I would not have voted for the transfer or sale of the property to the International if we had been able to obtain, or I thought we could obtain, a better offer.

X Q. 437. But at the time you and Mr. King were discussing the transfer of the International Shoe Company,

you did not own any stock in the W. H. McElwain Shoe Company?

A. No, I did not.

X Q. 438. Neither did Mr. King?

A. He did own it, in his own name.

X Q. 439. Qualifying shares?

A. No; he owned a large block with Mr. McElwain, as joint tenants.

X Q. 440. But that stock did not belong to them. It belonged to the International Shoe Company, didn't it?

A. Technically, yes.

X Q. 441. Just see if this is not true. You know that when Mr. King came back here after the complaint in this case was issued he consulted with you, didn't he?

A. No.

X Q. 442. You had a conference or some communication?

A. I had communications. But the advisability of making the change at that time was not taken up with me in any way.

X Q. 443. It was taken up with you when all the resignations came in?

A. When it was determined upon that the offer would be made at that time, I was told that the offer would be made.

[fol. 410] X Q. 444. And when it was accepted they wanted people in there who were not employed by the International Shoe Company?

A. True enough.

X Q. 445. That was the understanding, wasn't it?

A. True.

X Q. 446. Now, all of these performances, then, were gone through with simply for the purpose of transferring the assets to the International Shoe Company, were they not?

A. It was gone through with in anticipation that the offer of the International Shoe Company would be the only one, and the best one, and that the assets would therefore be transferred to it.

X Q. 447. Certainly. This meeting of June 20, 1923 was held, and the sale of the stock was gone through with, and the transactions in reference to the assets and property were had for the purpose of communicating to the Inter-

national Shoe Company the plants, assets and property of the W. H. McElwain Company, were they not?

A. Yes, except that if there had been a better offer the transfer would have been to other people.

X Q. 448. But, as stated a moment ago, there would be no other offer?

A. I did not anticipate there would be a better offer.

X Q. 449. You didn't expect one, did you?

A. I did not.

X Q. 450. When did you hear of Conference Ruling No. 8, Federal Trade Commission?

A. That does not identify it to my mind at all.

X Q. 451. Did you hear of such a ruling in reference to clause 7 of the Clayton Act?

A. No.

X Q. 452. And don't know anything about it yet?

A. No.

X Q. 453. Prior to June 20, 1923, what did Mr. King tell you about making a change in the plan of the International Shoe Company for the acquisition of the property and assets of the W. H. McElwain Company?

A. If you refer to the change in the amount to be paid, I don't know the date.

X Q. 454. Well, can I refer to anything besides the difference in the amount?

A. There was no other change.

X Q. 455. And no other plan that you knew anything about?

A. No.

X Q. 456. You don't know that the plan which Mr. King [fol. 411] brought to Boston from St. Louis was different from the plan finally consummated, do you?

A. I don't recall ever having heard of any other plan.

X Q. 457. You know nothing about that?

A. No.

Mr. Brindley: I believe that is all at this time.

Redirect examination.

By Mr. Blake:

Q. 458. Mr. Warren, have any of these qualifying shares of the directors here, who were acting for W. H. McElwain

Company on June 20, 1923, been tranferred to the International Shoe Company?

A. No, sir.

Q. 459. Where are those certificates now?

A. To the best of my recollection, they are in the vault.

Q. 460. Have any of them ever been transferred in blank?

A. Not to my recollection.

Q. 461. Do you know of any agreement to return those certificates to the International Shoe Company?

A. I do not.

Q. 462. Was a notice of the stockholders' meeting of June 20, 1923 sent to all stockholders of record of the W. H. McElwain Company?

A. It was sent to all who were of record at the time it was sent out, in accordance with law and the by-laws, and in addition was sent to all who became stockholders between the date of the original mailing of the notice to the others and the date of the meeting itself.

Q. 463. Do you know of your own knowledge that notice of this meeting was sent to Bennett, Limited?

A. Yes.

Q. 464. Did Bennett, Limited, appear at the meeting?

A. It did, in the person of Pierre Bonin.

Q. 465. By proxy?

A. Yes.

Q. 466. Did they take part in the meeting?

A. Yes.

Q. 467. And voted?

A. Yes.

Q. 468. On every proposition?

A. Yes.

Q. 469. Did they vote in favor of every proposition?

A. Yes.

Q. 470. Was any complaint made by anyone of not having received any notice of the meeting?

A. No.

Q. 471. They afterward accepted the liquidation dividend——

A. Yes.

[fol. 412] Q. 472. —in liquidation of the company?

A. Yes.

Q. 473. What was the custom of the W. H. McElwain Company as to closing its books prior to any such meeting of the stockholders?

A. It had never been accustomed to close its books.

Q. 474. Do you mean the stock transfer books?

A. Yes.

Q. 475. Suppose there was a transfer of stock between the time of the sending out of the notice and the time of the meeting. What were the rights of the new stockholder in connection with that meeting?

Mr. Brindley: We object to that absolutely. That is a question of law. My friend, the witness here, may be a very able lawyer, and I don't mean to reflect on his legal ability, but it is not for him to state as a matter of evidence.

Mr. Blake: I would like to have him answer the question, Mr. Examiner.

Examiner Bennett: I will note the objection and you may answer.

A. I assume such a stockholder could have appeared and voted on his stock, or against the proposition which was before the meeting.

Q. 476. Any proposition?

A. Yes.

Examiner Bennett: Would that be his strictly legal right? Have you looked that up at all?

The Witness: I have not. But I don't assume and don't believe that the legality of the meeting would be interfered with, when the notice had been sent out according to law, which is in this Commonwealth to the effect that a notice of the stockholders' meeting shall be sent seven days before a meeting.

Examiner Bennett: Is that the general stipulated provision in Massachusetts, or the provision in your by-laws?

The Witness: Both.

Examiner Bennett: They agree on that?

The Witness: Yes.

Examiner Bennett: What would you say was the purpose of that?

[fol. 413] The Witness: To provide that notice should be received before the meeting by stockholders, so that they might appear at the meeting.

Examiner Bennett: Would you say that it defined the rights of the persons who were to participate in the meeting?

The Witness: Yes, I should.

Q. 477. Would it be possible for a stockholder who had acquired his stock after notice had been mailed, say, having acquired the stock three days before the meeting, to have delayed or altered the time of that meeting through having thus acquired the stock?

A. I don't believe so.

Q. 478. In answer to the questions put to you by the examiner, when you spoke of stockholders and the requirement of the law that notice be sent to stockholders, you meant stockholders of record seven days before the meeting?

A. Yes, that is it exactly. Under the Massachusetts law a corporation is not bound by any transfers of stock unless they are a matter of record.

Examiner Bennett: That would be to say that the new stockholders would not have any vote if the officers so chose?

The Witness: I believe he would have a vote.

Examiner Bennett: How, if the officers of the corporation were not bound by the transfer?

The Witness: If the transfer is made before the meeting, he has a right to vote at the meeting.

Examiner Bennett: Well, has he a right?. Does not his voting at the meeting depend entirely upon the corporation recognizing that transfer and being bound by it?

The Witness: Yes, but they recognize it by recording it as a transfer. They could close their books if they wished to seven days before the meeting and not transfer it. Many corporations do.

Examiner Bennett: They might recognize it if they choose?

The Witness: Yes.

Examiner Bennett: And under the law are not compelled to?

The Witness: Yes.

[fol. 414] Examiner Bennett: And your officers, if they pleased, might have prevented Bennett, Limited, from voting at that meeting?

The Witness: I am not positive whether they could or not, without having passed before that time a vote closing the transfer books. I doubt very much if the officers could have prevented Bennett, Limited, from making the transfer. I believe that Bennett, Limited, could have asked for legal proceedings to compel the corporation to record the transfer.

Examiner Bennett: Your statement implies otherwise, doesn't it, that the law provides that a corporation is not bound by stock transfers that are not recorded?

The Witness: It means this: that until the transfer has been brought to its attention and a certificate presented for record and transferred on the books of the corporation, the corporation is not bound. I believe that once the certificates are offered to the corporation, if its transfer books are open, it must recognize the legal transfer.

Examiner Bennett: Would you advise a client to take that chance, if there was a transaction which involved a great deal of money, something like $4,000,000?

The Witness: To take that chance?

Examiner Bennett: The chance of buying the stock between the time of a crucial meeting and the day of final notice, and expect to vote at the meeting.

The Witness: I might under some circumstances, if I knew that the transaction was pending in that interim, advise my client in order to prevent delay in transfer by the corporation in its books, to take not only the certificates but a proxy from the prior holder, so that if he were not permitted to vote in his own right, he still could vote in the name and right of the prior holder.

Examiner Bennett: You would not take a chance on it?

The Witness: Not unless I knew the transfer agent, because delays are often inevitable.

Examiner Bennett: Unless compelled to, you would not take a chance on it, would you?

[fol. 415] The Witness: No; not unless the matter was beyond my control.

Q. 479. Mr. Warren, you were employed by the Bennett, Limited, to see that this transfer was properly put through?

A. Yes.

Q. 480. And you attended to that?

A. Yes.

Q. 481. And you charged them a fee for it?

A. Yes.

Q. 482. You were a former stockholder of the W. H. McElwain Company, were you not, Mr. Warren?

A. Yes.

Q. 483. Did you hold any official position with the company prior to 1921?

A. Yes.

Q. 484. And were in close touch with its officers and managers?

A. Very.

Q. 485. Do you know the attitude of those officers, you being one of them, as to the sale of the W. H. McElwain Company stock to the International Shoe Company in April and May of 1921?

A. I do.

Q. 486. Did you participate in their discussions of that matter?

A. To some extent.

Q. 487. I want you to just state what was the attitude of the officers as to this proposition, as to the proposed step of selling the stock to the International Shoe Company.

A. The company was in a very difficult financial position. The officers were very much troubled by it. It was the subject of considerable discussion. I know that they canvassed the situation very thoroughly in an attempt to finance the company, and to preserve its independence and individuality. I know from what they told me and from their attitude otherwise expressed, that had there been any way conceivable to them by which they could have kept the McElwain Company independent and preserved its individuality, they would have done so. I never knew a company whose officers were more thoroughly bound up, body and soul, in the success of the corporation, than in the case of the W. H. McElwain Company, never one where they were more loyal to it or more thoroughly desired its continuance and prosperity. I know that if they could have continued it they would have done so, and that the offer of the International Shoe Company—that they recommended [fol. 416] to stockholders the acceptance of the offer of the International Shoe Company for the stock of the McElwain Company only because they considered honestly, and after

very earnest and worrisome effort on their part, that it was absolutely the only way to save anything for the stockholders.

Q. 488. Did they make a very careful study of the situation before broaching the subject with the International Shoe Company?

A. I believe they did.

Q. 489. Did they, prior to actually deciding on the approaching of the International Shoe Company, reject the suggestion at one time?

A. I know that some time before then, I don't know how long, I had been told that the International Shoe Company had made some tentative offer to the company for the consolidation. Who told me or when I cannot say.

Q. 490. Do you mean to say that the International Shoe Company had, prior to this, made any suggestion of a consolidation to the McElwain Shoe Company with the International Shoe Company?

A. Something of the kind had been spoken about years before, when the company was prosperous, but I don't recall any more than that. But the company had rejected any suggestions from anyone that they should consolidate or do anything of the kind.

Q. 491. You have indicated in one of your answers there that the offer for this purchase of stock came from the International Shoe Company. Did the International Shoe Company initiate the negotiations with the W. H. McElwian Shoe Company?

A. I believe not. I understood at the time that it did not.

Q. 492. Mr. Warren, I notice that there is a small difference between the consideration stated in the contract between Bennett, Limited, and the International Shoe Company, which states the consideration of $4,061,094.14, and the $4,061,093.72 which is the amount of the liquidation dividend paid to Bennett, Limited. Where does that small difference come in?

A. I don't know. I did not draw the contract and I assume it was an error in the contract.

Examiner Bennett: Just a few cents, isn't it?

[fol. 417] The Witness: A few cents.

Q. 493. That could very well have resulted from this long fraction connected with the per share value?

A. Yes.

Q. 494. In so far as the old stockholders of the W. H. McElwain Company are concerned, what has been the result of this acquisition of the stock of the McElwain Company by the International Shoe Company?

A. It depends on the action taken by the former McElwain stockholders. Those who accepted the offer of the International Shoe Company and accepted International Shoe Company stock in exchange for their McElwain stock, with them the outcome depends on whether they exchanged their McElwain stock, if it was preferred, entirely for preferred stock or exchanged it for combination of preferred and common stock of the International Shoe Company. The stockholders who exchanged their McElwain preferred stock entirely for International preferred, I imagine, although I had not figured it lately, would perhaps come out even today, and perhaps make a little over what they paid for McElwain stock in the first place. Those who changed their McElwain stock for a combination of International preferred and International common, and who held on to their International common, are materially better off than they would have been otherwise and have realized a profit over what they paid for McElwain stock. Those who did either thing and sold their International stock right off, not daring to hold it, lost money. Of course those who did not make the exchange for International stock but continued to hold their McElwain stock until the International offer had expired, and accepted a liquidation dividend, lost money.

Recross-examination.

By Mr. Brindley:

X Q. 495. As a matter of fact, there was quite a lot of talk about International Shoe Company acquiring the W. H. McElwain Company prior to 1921, wasn't there?

A. No, not to my knowledge.

X Q. 496. You had heard of it a number of times?

A. No.

X Q. 497. You had heard of it at least?

A. Not a great deal of talk. I may have heard a rumor at one time, or on one or two occasions, just as there are

[fol. 418] frequently rumors in the shoe business that one corporation will acquire another, most of which rumors are absolutely baseless. But with respect to this corporation I cannot recall more than once or twice having heard of it.

X Q. 498. You talked with Mr. King prior to 1921?

A. No, not prior to 1921.

X Q. 499. Prior to 1921 the International Shoe Company did acquire it?

A. That was 1923.

X Q. 500. Was it?

A. Yes. That was when they acquired the assets. They acquired the stock in 1921. But I had never discussed with Mr. King the acquiring of the company by purchase or otherwise before 1921.

X Q. 501. I was speaking of stock, or, as you mentioned a moment ago, a combination.

A. I had heard a rumor, but nothing else. It was absolutely vague in my mind and cast aside. I had heard a rumor at one time, away back in the past, when the McElwain Company was prosperous, that the International Shoe Company would like to own it. But I do not recall discussing it with an officer of the McElwain Company or considering it in any way.

X Q. 502. That was the same proposition that the McElwain rejected?

A. It never came before the stockholders.

X Q. 503. What was it you testified to a moment ago that the McElwain Company rejected?

A. Oh, nothing ever came before McElwain in any way.

X Q. 504. Didn't you state a moment ago that they rejected something?

A. No. I said the rumor had come to me that the suggestion had been made by the International Shoe Company through some officer or otherwise. But it never came to my official attention in any way, because I would have known it if it had, as clerk or secretary of the company. It was not a thing which came officially to the company, if it came at all.

X Q. 505. The offer to acquire the stock in 1921 was accepted?

A. Yes, it was accepted by most of the stockholders.

X Q. 506. For the reason, as you said a while ago, that [fol. 419] the officers and stockholders of the McElwain Company felt that it could not preserve its separate individuality any longer?

A. Yes.

X Q. 507. Because of the situation in which they found themselves?

A. Yes.

X Q. 508. Don't you say that prior to that time they rejected an offer?

A. No, I did not intend to say that. If I said it, it was not my intention and it was entirely untrue.

X Q. 509. After their acquisition in 1921, the W. H. McElwain Company did practically lose its individuality and independence, didn't it?

A. The bulk of the stock was owned by the International Shoe Company and was voted by it.

X Q. 510. And it controlled the policy of the W. H. McElwain Company?

Mr. Blake: I would like to have him finish his first answer.

A. (resumed). And to that extent its individuality was not as it had been when the stock was held by several thousand independent stockholders.

Mr. Brindley: Have I your permission to ask another question now?

Mr. Blake: Yes.

Mr. Brindley: Thank you very much.

X Q. 511. So that after the International Shoe Company acquired the stock, it did control the policy of the W. H. McElwain Company, didn't it?

A. It had the power to control it; yes.

X Q. 512. And he exercised it?

A. Yes.

X Q. 513. And it operated here as the W. H. McElwain Company branch of the International Shoe Company, didn't it?

A. That phrase was not used in Boston, so far as I know, in any way.

X Q. 514. Was it used in New England?

A. Not so far as I know in any way. It may have been, but I did not know it. I don't believe it was used in New England in any way.

X Q. 515. You stated a moment ago that the stock certificates of the W. H. McElwain Company are in your vault.

A. Yes.

X Q. 516. Do you mean at your office?

A. Yes, my office.

X Q. 517. Could you let us have a look at them during the afternoon?

A. I would rather produce them this morning, if you get [fol. 420] through with me in time, so that I can keep my children from blowing themselves up by fireworks this afternoon.

X Q. 518. I hope that will be avoided.

A. I will bring over the certificates at once when I am excused.

Examiner Bennett: Mr. Warren, you were an officer of the McElwain Company up to a certain time. When did you cease to be an officer—before you were president?

The Witness: I believe I have been an officer, without interruption, since 1910.

Examiner Bennett: And you just changed office from clerk to secretary?

The Witness: First I was assistant secretary.

Examiner Bennett: Then you became secretary?

The Witness: Then I became clerk and secretary.

Examiner Bennett: And then became president?

The Witness: Yes.

Examiner Bennett: After 1921, after the consolidation, was the McElwain active as a corporation?

The Witness: Legally its corporate existence was as it had been before.

Examiner Bennett: I understand that—but as to the activities of the officers of the company, its meetings and so on.

The Witness: It held very nearly the same meetings that it had held before. It may be not as many directors' meetings—I don't know.

Examiner Bennett: But it held its annual meeting?

The Witness: Yes, it held its annual meeting, just as before.

Examiner Bennett: And as to the activities of the directors, did you record them also?

The Witness: I did.

Examiner Bennett: Were they active during that period, after the period of two years?

The Witness: Do you mean from 1921 to 1923?

Examiner Bennett: Yes.

The Witness: I don't believe they held as many meetings, or were as active as they were before.

[fol. 421] Examiner Bennett: What questions would they have up during that time?

The Witness: I should explain this, that as a matter of fact the McElwain Company never had as many directors' meetings or brought as many matters up for consideration at formal directors' meetings, as in most corporations. They held a directors' meeting about once a quarter, but their directors' meetings were not very frequent. The officers throughout the corporation's history had quite broad authority and exercised that authority with infrequent directors' meetings. So that the only difference after the International acquired the stock was a slightly fewer directors' conferences and meetings. That is all.

Examiner Bennett: But the management was in the officers very largely?

The Witness: Yes.

Examiner Bennett: And in that two years, in what officers was it largely?

The Witness: I presume largely in the treasurer. Mr. King was, I presume, the man who exercised the chief authority during that period.

Examiner Bennett: And it was exercised—I suppose you don't know whether it was exercised under the direction of the International Shoe Company?

The Witness: I don't know. I never went to St. Louis and never myself had any dealings with the International Shoe Company.

Examiner Bennett: Who dealt with you in your contract with the McElwain Company?

The Witness: Mr. King.

Examiner Bennett: It was he who made your contract for 1923?

The Witness: Yes.

Examiner Bennett: And during that time the International Shoe Company was really financing the W. H. McElwain Company?

The Witness: It was.

Examiner Bennett: As to that offer of the International [fol. 422] Shoe Company in 1923, that offer was exactly, was it not, the amount that is used in retiring the stock of the McElwain Company in the liquidation of the claims of the stockholders? It figured out exactly the amount, didn't it, the amount paid to Bennett, Limited, and the amount paid to the holders of 35 shares?

The Witness: Of course we figured out the calculation the other way. The International Shoe Company offer was based on the book value of the McElwain assets plus $1,500,000. Having determined that figure we then determined what the liquidation would be, and the liquidation dividend was entirely dependent upon that figure which was first ascertained.

Examiner Bennett: Taking the transaction in this way: The offer for the assets of the McElwain Company by the International Shoe Company was just sufficient to pay Bennett, Limited, what it received and to pay the holders of the other 35 shares.

The Witness: I would answer that yes, except that I want to remove any inference that we first determined what was required to pay the stockholders, and then fixed the price. It was the other way around.

Examiner Bennett: I only want the facts.

The Witness: The amount received by the McElwain Company from the International Shoe Company is just sufficient for the liquidation paid to Bennett, Limited, plus the liquidation which was paid to or reserved for other first preferred stockholders who have not accepted it; plus a mathematical discrepancy of about seven cents which resulted in the calculation because we had not carried out the decimal point more than six places.

Examiner Bennett: And that is all that the Bennett, Limited, got out of the transaction?

The Witness: Yes, to my knowledge.

Examiner Bennett: And Bennett, Limited, was subjected to quite a little expense?

The Witness: Very little.

Examiner Bennett: They paid your fee?

The Witness: That was very small, as a matter of fact.

[fol. 423] Examiner Bennett: And it was some expense in connection with Pierre Bonin's visit and the trip to New York?

The Witness: There must have been some expense.

Examiner Bennett: What record was made in practice by your company of the notice sent to stockholders antedating a meeting such as that which took place on June 20, 1923.

The Witness: No record has been kept more than of the original notice. The addresses were given us by the Old Colony Trust Company by letter or telephone, and I, as clerk, or dictating it to my secretary as clerk, sent the notice to the separties, and I certified that the notices were sent. We never sent them by registered mail at all.

Examiner Bennett: Do you keep any list of the persons to whom notices were sent, or of the persons to whom notices were sent on a particular day.

The Witness: Not of the precise date. I have a certified list, of the Old Colony Trust Company, of stockholders as of June 20. That list is here, but it is true that I kept no record of the dates of sending the notice.

Examiner Bennett: Then the record itself would not indicate whether the law had been complied with.

The Witness: The certification by the clerk is accepted as final in the absence of proof to the contrary.

Examiner Bennett: Is there in the records of the company any trust agreement in regard to the stock held by Mr. King and Mr. McElwain?

The Witness: No, not in the records of the company. If there is any such thing I don't have it, and the company's records don't contain it.

Examiner Bennett: Has the McElwain Company any assets now?

The Witness: No; the liquidation dividends of remaining stockholders are in the hands of the Old Colony Trust Company for payment to them, and I do not consider that that is an asset of the company.

Examiner Bennett: It is practically held in trust for them?

[fol. 424] The Witness: Practically; yes.

Examiner Bennett: So that it is out of the hands of the company?

The Witness: Yes.

Examiner Bennett: Your stock, then, would not have any value?

The Witness: No.

Examiner Bennett: No formal steps have been taken to dissolve the company?

The Witness: They have not, aside from the fact that the stockholders voted to authorize the directors to take steps when they should determine upon so doing. The steps have not been taken.

Examiner Bennett: It has not been completed. When did you close the account with the National Bank of Commerce?

The Witness: That was closed in the course of July, 1923.

Examiner Bennett: You don't remember when, that is, the date?

The Witness: I would say it was about the middle of July.

Examiner Bennett: You had about $1,000 balance there after the 21st of June.

The Witness: Yes.

Examiner Bennett: And that was withdrawn some time in July?

The Witness: Yes, it was.

Examiner Bennett: That is all.

By Mr. Brindley:

X Q. 519. I have one other question I overlooked. Do you know Mr. Edward Wigglesworth?

A. No, I do not.

X Q. 520. Do you know who he is?

A. From hearsay, yes. I never have met him.

X Q. 521. Do you know that he was at one time a stockholder in the W. H. McElwain Company?

A. Yes.

X Q. 522. And was a stockholder while you were president of the W. H. McElwain Company?

A. Yes.

[fol. 425] X Q. 523. And he is one stockholder who was not present at the special meeting on June 20, 1923?

A. Yes.

X Q. 524. What became of Mr. Wigglesworth's stock?

A. That was in some way acquired by the International Shoe Company, and was by it transferred to Bennett, Limited.

X Q. 525. It was acquired, then, after the meeting of June 20, 1923?

A. Yes.

X Q. 526. Do you know how much was paid to Mr. Wigglesworth for his 50 shares of stock?

A. I do not.

X Q. 527. He held 50 shares of common stock, didn't he?

A. Yes, he did.

X Q. 528. And that is the stock which you testified a short while ago was worthless?

A. Yes, sir.

X Q. 529. It is out of the game though, now, isn't it?

A. Yes, sir.

X Q. 530. Bought out by the International Shoe Company?

A. The stock was acquired by the International Shoe Company. I don't know anything about it.

Mr. Brindley: That is all.

[Witness excused.]

CLAUDE A. ELLISON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Blake:

Q. 1. Mr. Ellison, state your name, address, and your occupation.

A. Claude A. Ellison; St. Louis, Missouri; assistant to the auditor.

Q. 2. Auditor of what?

A. Of the International Shoe Company.

Q. 3. You are in the auditing department, then, of the International Shoe Company?

A. Yes, sir.

Q. 4. How long have you been connected with them?

A. About twelve years.

Q. 5. I hand you Respondent's Exhibit 37 in this case, Mr. Ellison, and ask you if you can identify those sheets?

A. Yes, sir; these are the lists that I checked against the International Shoe Company customers.

[fol. 426] Q. 6. How did you get these lists, Mr. Ellison; where, and how, and from whom?

A. They were given to me by you.

Q. 7. For the purpose of checking against the International Shoe Company?

A. Yes, checking against the customers of the International Shoe Company.

Q. 8. Did you take these lists and check them against the customers of the International Shoe Company?

A. I did.

Q. 9. Mr. Ellison, just tell us now the method you followed in checking these lists against the International records.

A. I took our list and checked it against our records of customers.

Q. 10. By "our list" do you not mean the lists as appear in the different States?

A. Yes.

Q. 11. The lists of the customers as listed by these McElwain lists?

A. Yes.

Q. 12. You took the lists of the customers, and then how did you handle that name?

A. I looked at each record——

Q. 13. What record?

A. Record of customers' sales.

Q. 14. The ledgers of the company?

A. Yes.

Q. 15. And then when you found a customer whose name was listed on these sheets of Exhibit 37 what did you do?

A. I took a record of each sale invoice number and date, as appeared on the International records.

Q. 16. What dates did you cover?

A. From June 1, 1920 to May 31, 1921, inclusive.

Q. 17. And you looked up each and every customer that appears on Exhibit 37?

A. Yes, sir.

Q. 18. Having taken from the ledgers the invoice number and the date, what did you then do?

A. I went through our files of invoices, the duplicate of the original bill, and looked up each one of them, to see what kind of shoes we had sold.

Q. 19. What do you mean by what kind of shoes were sold?

A. As to whether it was men's, women's, children's and so on. Whether there was any high grade men's shoes.

Q. 20. Do you mean that you dug out of the files of the company the duplicate invoices of all shipments to these customers on these lists, and examined those invoices to see whether or not the International Shoe Company had [fol. 427] sold men's, women's, children's, boys' or infants' shoes?

A. Yes, sir.

Q. 21. Did you make a notation of those facts and findings?

A. I did.

Q. 22. Did you take out and preserve any particular invoices?

A. Yes, sir; I took out the original, and duplicate, of all men's dress shoes.

Q. 23. That is, the shoes that have been identified as the Patriot line shoes?

A. Yes, sir.

Q. 24. I hand you another set of papers, and ask you if you can identify those?

A. Yes; those are the 51 invoices which I took out.

Q. 25. You examined those files covering that period from June 1, 1920 to May 31, 1921?

A. Yes, sir.

Q. 26. You took those invoices from those files?

A. Yes, sir.

Q. 27. Are these all of the invoices for men's dress shoes, Patriot line, that you can find in these files?

A. Yes.

Q. 28. And there are 51 of these invoices?

A. Yes, sir.

Q. 29. Mr. Ellison, do you know anything at all about the purchase of the stock of the McElwain Company?

A. No, sir.

Q. 30. Do you know anything about the sale of that stock in 1923?

A. No, sir.

Q. 31. Do you know anything about the purchase of the assets of the W. H. McElwain Company in 1923?

A. No, sir.

Q. 32. Do you know anything about the merchandise of the International Shoe Company?

A. No, sir.

Q. 33. You are simply in the auditing department of the International Shoe Company?

A. Yes, sir.

Mr. Blake: That is all.

Cross-examination.

By Mr. Brindley:

X Q. 34. Do you know what is Respondent's Exhibit 37 which you have just testified about?

A. Yes, sir.

X Q. 35. What is it?

A. It is a list of McElwain customers.

X Q. 36. Located where?

A. All over the United States.

X Q. 37. And what kind of customers or class of customers?

[fol. 428] A. I don't suppose any particular class. As I understand it, it includes all classes.

X Q. 38. What kind of business men or dealers?

A. Retail shoe dealers.

X Q. 39. Not retailer dealers only?

A. Dealers selling shoes at retail.

X Q. 40. They were customers to whom McElwain sold shoes throughout the various States of the United States?

A. Yes.

X Q. 41. You took this list, Respondent's Exhibit 37, and compared that with the ledger of the International Shoe Company?

A. Yes, sir.

X Q. 42. And any name appearing on this Exhibit 37 as a customer of McElwain, if you found that name on the ledgers of the International Shoe Company, you made a note of that?

A. Yes, sir.

X Q. 43. To indicate of course that that person was a customer of both concerns, the International Shoe Company and the W. H. McElwain Company?

A. Yes, sir.

X Q. 44. And having ascertained the names of all persons on Exhibit 37, who were customers of the International Shoe Company, as well as customers of the W. H. McElwain Company, you then looked for the invoices of the International Shoe Company to or against that particular customer, did you?

A. I then looked up the customer's account.

X Q. 45. His account?

A. Yes, sir.

X Q. 46. For what purpose?

A. I took a list of the charges to his account or the sales made by the International.

X Q. 47. Did you select them from the files of the company, all the invoices or copies of invoices?

A. I looked up every invoice that appeared on the ledger.

X Q. 48. That appeared on the ledger, and also appeared on Respondent's Exhibit 37?

A. For that name; yes, sir.

X Q. 49. You did not look up the names of any other customers with the International Shoe Company that they might have had in the same town?

A. Not unless they appeared on that list.

[fol. 429] X Q. 50. That is, on the list of the W. H. McElwain customers?

A. Yes, sir.

X Q. 51. What invoices did you select from the files?

A. I selected all invoices covering the so-called Patriot brand shoes or the men's dress shoes.

X Q. 52. Suppose there were invoices there to the same customers, on other kinds of shoes. What did you do?

A. I did not take them out, but only made a record of the kind of shoes that we sold them.

X Q. 53. Then the invoices which you selected were of the customers of the International Shoe Company and the W. H. McElwain Company for Patriot shoes sold by the International Shoe Company?

A. Yes, sir.

X Q. 54. You made no examination to ascertain how many customers the International Shoe Company might have in the different States listed on Exhibit 37, did you?
A. No, sir.

Mr. Brindley: That is all.

[Witness excused. Recess to 1.30 p. m.]

After Recess, 1.30 p. m.

F. C. Rand was thereupon recalled as a witness, and testified as follows:

Direct examination.

By Mr. Blake:

Q. 739. Mr. Rand, you were present and heard Mr. Clifford P. Warren, president of the W. H. McElwain Company, testify this morning, were you not?
A. I was.
Q. 740. And you heard Mr. Warren testify that, at one time prior to 1921, he had heard a rumor that International Shoe Company had made a proposal to the W. H. McElwain Company to consolidate. You heard him make that statement?
A. I did.
Q. 741. How long have you been president of the International Shoe Company?
A. Since 1916.
Q. 742. You were connected with the company prior to that as one of its officers?
A. Yes; I have been connected with it since the time of its organization.
Q. 743. 1911?
A. Yes.
[fol. 430] Q. 744. Do you know of any time that any such proposal was made by the International Shoe Company?
A. No, I know of no such time. On the contrary, I know that no such proposal ever had been made with any authority. I am qualifying this because I hesitate to testify to a negative proposal. I know of no such proposal, and

no such proposal was made by anyone having authority in our business.

Q. 745. Do you know whether any such proposal has ever been made for the consolidation with any company since the original organization of the International Shoe Company?

A. A proposal of purchase was made to the McElwain Company, after a series of interviews negotiated by them, looking to the sale of their company to us.

Q. 746. You are speaking of the consolidation, then, in 1921?

A. Yes.

Q. 747. And you know of no other?

A. No other. We have never approached, by our own initiative, any other business with the idea of purchasing it or consolidating with it.

Q. 748. Mr. Rand, do you know of rumors of such things in the trade, even at the present time?

A. Yes. There has been a persistent rumor for the past six months that the International Shoe Company is in negotiation with a large company down here; the rumor was that it had acquired it, and it was published in a trade paper.

Q. 749. Is there any foundation of truth whatever for that rumor?

A. None, to the knowledge of the officers of the International Shoe Company. We have never discussed it, directly or indirectly, and do not even know the people personally. Rumors in the shoe trade are rather rife. I heard, in 1921, a rumor about the McElwain Company and the International Shoe Company which was just after we had completed negotiations here in Boston; and a stranger walked down the street with me, and he asked me if I had heard that the McElwain Company had bought out the International Shoe Company.

Examiner Bennett: That is the Boston viewpoint.

The Witness: Yes, sir. I told him I had not heard it. [fol. 431] I think that within the past three or four years I have seen or heard rumors that the International Shoe Company, at one time or other, had acquired practically every large shoe manufacturer in the country. That is to

show how little confidence can be placed in the average rumor.

Q. 750. Mr. Rand, all through the record there is quite a bit of testimony as to the difference in the quality of men's dress shoes that were sold by W. H. McElwain Company in 1921 and those that were sold by International Shoe Company in 1921. Was that difference in quality and construction material,—a material difference in the trade?

A. It was very material at that time.

Q. 751. Now, Mr. Rand, had there always been that material difference in the quality of the shoes made and sold by W. H. McElwain Company and the International Shoe Company? That is, speaking, of course, of the men's dress shoes?

A. I think that McElwain's shoes and the International shoes, classified in this broad type, were always different in style and appearance. The International paid most of its attention to wear and service, where they had directed a large amount of their attention to style and finish; but 15 or 20 years ago the intrinsic value of the shoes were not as widely apart as they were in 1921. Along in 1906 or 1907, to my best knowledge, the shoe manufacturers in the United States were using more or less substitute for leather,—some to an extreme degree, and others to a less degree. Roberts, Johnson & Rand had used, in a very limited degree, some substitutes for leather; it was a cheapening process, and with a market condition going up for 10 or 15 years, constantly rising, we realized in 1906 or 1907 that we were not smart enough to know where to stop in the substitutes, so we abandoned them entirely and went to a standard of solid leather shoes, with the use of no substitutes. No one else in the country was following such a standard, and we were subjected to the ridicule of other shoe manufacturers, particularly those in New England; and we were classified as a group of southern farmers who were trying to make shoes, and did not know how to make [fol. 432] them. We thought we were right, and stuck to that policy; and, in my judgment, that fixed standard of the true measures of values has raised the standard of shoemaking in the United States; but we were alone in the field for some eight or ten years.

Q. 752. What was the policy of the W. H. McElwain Company in about 1906 or 1907?

A. I think our start—I think there was a time when our attitude toward the construction of footwear was not very different; and beginning about that time—it was in 1908 that Mr. W. H. McElwain died, and they went to one extreme and we went to the other extreme, so that as the years passed by we got further and further apart in the standards of construction of our products. And that was true in 1921 to probably the greatest extreme, because the temptation was very much greater—leathers were excessivly high and the temptation for substitution was therefore very much greater.

Q. 753. I hand you a set of papers and ask you if you can identify that as Respondent's Exhibit 37, being a list of the customers of W. H. McElwain Company in the period from June 1, 1920, to May 31, 1921?

A. I can.

Q. 754. I hand you another set of papers and ask you if you can identify those papers?

A. I can.

Q. 755. What are they?

A. They are 51 invoices of the International Shoe Company Patriot shoes sold to customers whose names appear on Respondent's Exhibit 37 as customers of W. H. McElwain Company for the period between June 1, 1920, and May 31, 1921, inclusive.

Q. 756. In your examination out at St. Louis you identified the Patriot line of men's dress shoes for Colonel Brindley in the catalogue which was filed as Exhibit 13, did you not? You identified them by number?

A. I identified them by number. I do not know the number of the exhibit, but I took our 1921 catalogue and identified 32 numbers.

Q. 757. Now, Mr. Rand, have you, since we adjourned, made an analysis of the sheets showing the McElwain retail customers in the different States during the fiscal year ending May 31, 1921, as shown on Respondent's Exhibit 37?

A. I have.

[fol. 433] Q. 758. Are you now prepared to give an accurate comparison with the International Shoe Company's records of sales of Patriot, or men's dress shoes, to customers whose names appear on these sheets?

A. I am.

Q. 759. Before you give us the results of this analysis and comparison please explain the method used in making the analysis and comparison.

A. We have used Respondent's Exhibit 37 showing the sales of McElwain Company to retail shoe dealers for the fiscal year ending May 31, 1921. We have taken the population of the states, cities and towns from the United States Census Bureau figures of 1920, and that is a source of information which we use regularly in our business in estimating the per capita sales of the State. We have enumerated the list of retailers in each State and the number of cities and towns in each State, and for that information we have used J. Walter Thompson's "Population and Its Distribution"; and that is based on the United States Census Bureau reports, together with compilations from trade sources. For years we have used this data in trying to fix a standard for the per capita sales of our salesmen in various States. The data concerning the sales of International Shoe Company is taken from the actual duplicate invoices on file in the company. Since the hearing in St. Louis we have had a group of men look up these duplicate invoices and take from them the actual figures and information used in this analysis. The guide to this work was Respondent's Exhibit 37, or the list of customers originally submitted by the McElwain Company. Where it was found that we had sold to one of these retailers the file number of all invoices was taken. Those invoices were then taken from the files and notation made of the kind of shoes we had sold the customers, namely, whether women's, men's, boys' or children's; and the invoices which showed any sales of our men's dress shoes—namely, our Patriot line—all stock numbers of which ranged from 1,010 to 1,300, inclusive, were separated. I have identified these shoes by numbers in the catalogue which is filed as Commission's Exhibit 13. I can therefore say that the figures as to our sales to these retail shoe dealers are accurate. An examination of these records and [fol. 434] the invoices was made by our employees, who are familiar with the records and files and stock and invoice numbers. I have done some of the checking of the work to satisfy myself as to its accuracy.

Q. 760. Just at this point, Mr. Rand, will you file a copy of one of these invoices as an exhibit, and explain the items on the invoice?

A. Here is an invoice numbered 3738, which is an invoice number appearing on our ledgers. The original invoice was of August 12, 1920, to the Consolidation Coal Company in Fairmont, West Virginia. It was sold on 45 days time by a salesman named Thomason, his order number being 5190. The shipment went out by parcel post, and was for one pair of stock No. 1028, men's Patriot shoe, size 10, D width, at $7.50. There was an additional charge of 20 cents which is evidently parcel post charge. The Consolidation Coal Company has several stores, and this particular pair of shoes was for the Everson store at Everson, West Virginia.

Mr. Blake: We offer that as Respondent's Exhibit 46.

Examiner Bennett: It may be received.

[Copy of invoice August 12, 1920, International Shoe Company to Consolidation Coal Company, marked "Respondent's Exhibit 46."]

Q. 761. What was the result of the analysis of these accounts?

A. We found there were 42 States in which we sold no Patriot shoes to accounts that had bought from McElwain & Company in the period between June 1, 1920, and May 31, 1921. In other words, there were 42 States in the Union that had to be eliminated; and that left six States where we found that we had sold Patriot shoes to customers in the list in Respondent's Exhibit 37; and those States were West Virginia, Missouri, South Carolina, Texas, Georgia and California.

Q. 762. Now tell us with respect to West Virginia, just what your findings were there.

A. Using the units of dozens, which is used on the Respondent's Exhibit 37, we find that in West Virginia we sold 5 3/12 dozen pairs of shoes to one customer whose name appears on Respondent's Exhibit 37. That customer is the Consolidated Coal Company at Fairmont, West Vir- [fol. 435] ginia. In the fiscal year it bought 310 dozen pairs of shoes from W. H. McElwain, but Exhibit 37 does

not show the dates of these purchases. Prior to March 1, 1921, we had sold this customer only two pairs of Patriot shoes. In March and April, 1921, McElwain & Company was in difficulties and those are the months when we sold this customer the other 5 1/12 dozen pairs, as shown by these invoices. In 1920, West Virginia had a population of 1,463,701 and Fairmont had a population of 17,851. There were 3,208 retail shoe dealers in the state in 1920. The total of our invoices for Patriot shoes to this one customer was $331.10.

Q. 763. What about Missouri?

A. We sold Patriot shoes to two of the McElwain customers in the State of Missouri outside of St. Louis; a customer at Chillicothe bought 10 pairs of shoes from us at a total cost of $92.50; from McElwain they bought 44 dozen pairs. A customer at Pevely, Missouri, which is a small town near St. Louis, bought from us 2 1/3 dozen pairs of Patriots at a total cost of $174.40; from the McElwain Company he bought six dozen pairs. In the City of St. Louis there are invoices to six of the McElwain customers for a total of 4 9/12 dozen Patriot shoes for a total cost of $333.35. Three of these customers are wholesalers who are neighbors of ours. Manskofsky-Goldstein Shoe Company bought one pair of Patriot shoes; Modern Shoe Company bought one pair of Patriot shoes; T. Levy bought one dozen pairs of Patriot shoes. It is apparent that these sales were made to these neighbors as a matter of accommodation on some special order, for we do not sell wholesalers. Purchases of that kind are called "buy-out" orders. It is not uncommon for us, in receiving an order for one or two or three pairs of shoes of which we may be short on size or width, to go down in town and purchase that particular pair, or one or two or three pairs of shoes, to accommodate the customer. We buy them either from wholesalers or in extreme cases we have gone out to retailers and bought the shoes. It is to meet a specific need of the customers and that is what we have done with these several wholesalers. Of the large retailers in the City of St. Louis whose names appear on the McElwain list, the [fol. 436] Fitwell Shoe Company bought 1 5/12 dozen Patriot shoes at a total cost of $96. This firm, the same year, bought from McElwain 118 dozen pairs. C. E. Williams bought two dozen pairs of Patriots at a total cost of $140.40.

From McElwain, in the same year, he bought 458 dozen pairs. Huelsman Shoe Company bought two pairs of the Patriot shoes at a total cost of $12; McElwain sold that company 127 dozen pairs. It is evident that the small sales of Patriot shoes in St. Louis were accommodation sales or fill-in purchases by the customer. In 1920, the population of Missouri was 3,404,055, and there were 5,150 retailer shoe dealers in the state.

Q. 764. What were your findings as to South Carolina?

A. In South Carolina we only sold one and one-fourth dozen pairs of Patriot shoes to three stores that appear in the McElwain list. The store at Timmonsville took two pairs of Patriots at a cost of $19.50. In the same year that store bought from McElwain 130 dozen pairs. The store at Lamar sold by McElwain bought from us one dozen pairs of Patriots at a total cost of $63. In the same year it bought from McElwain 35 dozen pairs. The store at Columbia bought one pair of Patriot shoes. In the same year it bought 13 dozen pairs from McElwain. In 1920 South Carolina had a population of 1,683,724, and there were 2,529 retail shoe dealers in the state.

Q. 765. Now, what do you find as to the State of Texas?

A. Our invoices show that we sold 32 1/3 dozen Patriots in the State of Texas to two customers whose names appear on the McElwain list. The store at Taylor, Texas, took 3 11/12 dozen pairs of our Patriot shoes at a total cost of $340.75. This store bought 40 dozen pairs of McElwain shoes. The other store at Texarkana bought 28 5/12 dozen pairs of Patriots at a total cost of $2,162.25. In the same year McElwain sold this customer two dozen pairs. The population of Texas in 1920 was 4,663,220. There were 5,502 retail shoe dealers in the state in 1920.

Q. 766. Now, what did you find as to Georgia?

A. Our invoices show that we sold 4 1/2 dozen pairs of Patriots in the State of Georgia to four customers whose names appear on the McElwain list. The store at Monti- [fol. 437] cello bought three pairs of Patriots at a total cost of $25.50. It bought 47 dozen pairs of McElwain shoes. The store at Greensboro bought nine pairs of Patriots at a total cost of $72.75. It bought from McElwain 21 dozen pairs. The store at Dawson bought one dozen pairs of Patriots at a total cost of $60. They bought from McElwain six dozen pairs. The store at Lindale bought

2 1/2 dozen pairs of Patriots at a total cost of $144.25. It bought from McElwain 86 dozen pairs. The population of Georgia in 1920 was 2,895,832. There were 3,742 retail shoe dealers in the state.

Q. 767. Now, what did you find as to California?

A. We sold in the State of California to only one customer whose name appears in the McElwain lists, and to this customer we sold 1 9/12 dozen pairs of Patriots at a total cost of $152.50. McElwain sold this customer eight dozen pairs,—an account located in Los Angeles. In 1920 the population of California was 3,426,861, and there were 2,637 retail shoe dealers in the state.

Q. 768. Now, Mr. Rand, will you sum up the foregoing for the whole United States?

A. We sold our Patriot shoes to 19 customers, 16 of whom were retailers and three of whom were wholesalers, whose names appear on the list of McElwain customers. In 1920 there were 141,867 retail shoe dealers in the United States. We sold to the customers on Exhibit 37 a total of 52 5/12 dozen pairs of Patriots. In other words, of all the shoe retailers in the United States, there were only 16 who bought men's dress shoes from McElwain and also bought our Patriot shoes. Our daily production of men's dress shoes was 250 dozen pairs, or 3,000 pairs per day; and yet, in the whole year, we sold only 52 5/12 dozen pairs to these McElwain customers.

Q. 769. Now, Mr. Rand, in making this analysis you have treated these men's dress shoes in the general or generic class, in spite of the radical differences in style and finish and construction that you have brought out at a number of points in your testimony have you not? You have just treated them in a general class?

A. Why, yes, I have treated them in a general class, taking the shoes that I identified, as best I could, in St. Louis, together with the explanation that I gave at that time, [fol. 438] that the photographs were not very indicative of the shoes, and I did not feel that they were competitive.

Q. 770. Now, Mr. Rand, will you take Respondent's Exhibit 37 and take each sheet as you come to it and explain what you did in connection with each sheet?

A. The first sheet is a compilation of various States in which McElwain had sold shoes in the fiscal year 1921.

Q. 771. That is to retail dealers, is it not?

A. To retail shoe dealers. There were 38 different items of States or localities, but that included New Foundland and the Hawaiian Islands. McElwain & Company had sold for the year ending May 31, 1921, 76,315 dozen pairs of shoes in the States of the United States, and they had sold 1,640 dozen pairs of shoes in the territories outside of the United States. This sheet is a summary of the individual sheets numbered from 1 to 38, inclusive, and gives more details with regard to each of the customers. The second sheet is a list of wholesalers whom McElwain had sold shoes to in the fiscal year 1921, and that is eliminated from the discussion. The third sheet is a general summary which will be covered in detail. The next sheet is sales to independent jobbers. We were not selling to them and they are eliminated,—that is really the next two sheets. The sheet for the State of New Hampshire shows there was one customer, W. L. Goodnow Company at Keene in New Hampshire, a town of a population of 11,200 people. McElwain Company sold 30 dozen shoes in that town. That town was the only town out of a state in which the population, in 1920, was 443,083. There were 853 retail shoe dealers in the State of New Hampshire. The International Shoe Company sold no Patriot shoes to this account. In the State of Massachusetts it shows that McElwain had eight customers in three cities. Six of the eight customers were in the City of Boston; in Haverhill with a population of 53,484, McElwain Company sold 270 dozen pairs of shoes. In Gardner with a population of 16,971, McElwain Company sold eight dozen pairs of shoes. There are 3,700 retail shoe dealers in the state. International Shoe Company sold no Patriot shoes to any of these customers.

[fol. 439] Q. 772. What is the population of the State of Massachusetts?

A. 3,852,356 in 1920. In Rhode Island the McElwain Company had one customer in the State of Rhode Island, with a population of 604,397. This customer was located at Providence, and to that customer 104 dozen pairs of shoes were sold. The International Shoe Company sold no Patriot shoes to the customer, and there are 682 retail shoe dealers in the state.

The next sheet is the sheet of Connecticut, which state had 1,380,631 people in 1920. McElwain Company had only

one man in the state, at Hartford, Connecticut, a large city; and they sold to the account 10 dozen pairs of shoes. International Shoe Company sold no Patriot shoes to the account. There were 1,720 retail shoe merchants in the state.

The next is the State of New York with a population of 10,385,227 people. The McElwain Company had 26 customers and practically all the sales were in five large cities of New York, namely, Brooklyn, Buffalo, Rochester and Syracuse. The only other sale was eight dozen pairs of shoes sold in Endicott, a city of 9,500 people. The International Shoe Company sold no Patriot shoes to any of these customers, and there were 10,919 retail shoe dealers in the state.

The State of New Jersey, McElwain had two accounts, one at Paterson, New Jersey, and the other at Newark. In the first town they sold 31 dozen and in the second one 38 dozen. The International Shoe Company sold no Patriot shoes to these customers of McElwain & Company. There are 3,425 retail shoe dealers in that State.

The next is Pennsylvania, having a population of 8,720,000 people. McElwain had 17 customers, 13 of whom were in the large cities, namely, Philadelphia, Pittsburg, Allentown, York and Erie. They sold in the state 4,437 dozen shoes; and of this amount 4,391 dozen were sold in the large cities; leaving only 46 dozen sold in the other four towns; and a chain of stores is responsible for the appearance on this list of three of the small towns. There were 12,719 retailers in the state. The International Shoe Company sold [fol. 440] no Patriot shoes to any of these customers.

Maryland: McElwain had customers in one city in Maryland, the City of Baltimore. They had three customers, and these three customers bought 4,174 dozen—16 dozen to one customer, 4,058 dozen to another, and 100 dozen to the third. The International Shoe Company sold none of these customers. There are 2,165 retail shoe dealers in the State of Maryland, which State has a population of 1,449,651 people. In the District of Columbia with a population of 437,571 people, McElwain & Company had one customer and sold to that customer 40 dozen shoes. There are 202 retail shoe dealers in the District of Columbia. The Inter-

national Shoe Company did not sell any Patriot shoes to McElwain's customers at Washington.

The next state is the State of Ohio, having a population of 5,759,394, where there were 26 customers of McElwain in 13 cities. Delaware, Ohio, with a population of 8,756 is the smallest city of the 13, and only 17 dozen pairs of shoes were sold there. The large bulk of the sales were in Dayton, Cincinnati, Cleveland, Canton, Columbus, Springfield, Akron and Toledo. Of the 5,015 dozen pairs of shoes sold in the state, 4,693 dozen pairs were sold in the eight large cities, and only 322 dozen pairs were sold in the other five cities, having populations of 7,756; 11,000; 14,007; 15,831, and 17,428. In three of these five cities the sales were to chain stores, leaving only two independent retailers in the two smaller cities to whom the McElwain Company sold shoes. The International Company sold no Patriot shoes to any of these customers of the McElwain Company.

Q. 773. How many retail shoe dealers are there in that state?

A. There are 6,266 retail shoe dealers in the State of Ohio. The next sheet is for the State of Indiana, having a population of 2,930,390. If we considered the 10 Rapp chain stores as one customer, there were 17 customers in 18 cities that were sold in the fiscal year 1921 by the McElwain Company. At Goshen, Indiana, the only city of less than 10,000 people, only nine dozen pairs were sold. Its population is 9,925. The sales in Kokomo, a city of [fol. 441] 30,067 people, amounted to 1,087 dozen. Indianapolis was next with 375 dozen pairs. The other sales were about equally distributed among the other sixteen cities, no large quantities to any of them. It should be observed that the Rapp chain stores on this list bring up the total of cities, and are also responsible for the appearance of the smaller cities on this list. The International Shoe Company sold no Patriot shoes to any of the McElwain customers enumerated on the sheet in 1920, and there are 3,980 retail shoe dealers in the State of Indiana.

The next is the State of Illinois. In Mr. King's testimony in St. Louis he attempted to run over this sheet covering Illinois, and stated that the McElwain Company had sold shoes in 36 towns and cities. He was in error, for there are 47 customers in 29 cities and towns, considering

each chain store system as one customer. Illinois has a population of 6,485,280 and the McElwain Company sold in the State of Illinois, in 1921, 5,104 dozen pairs of shoes of which 4,332 dozen pairs were sold in 15 cities of more than 10,000 people. The other 772 dozen pairs were distributed in smaller quantities among 14 other cities and towns. It is significant that of these fourteen smaller cities and towns the chain stores account for the appearance in the list of seven towns, and of the 772 dozen pairs sold in the smaller cities and towns, 370 dozen were sold to these chain stores, leaving a balance of only 402 dozen pairs distributed to the other retailers in the smaller cities and towns of Illinois. In the State of Illinois 3,027 dozen pairs were sold in the City of Chicago. The notorious town of Herrin, with a population of 10,986 people, only bought 50 dozen pairs during the year. Marion, with a population of 7,093, only bought 26 dozen pairs. Boston, with a population of 7,201, only bought 23 dozen pairs. Pana, with a population of 6,122, only bought 80 dozen pairs. Bloomington, with a population of 28,875, bought only 30 dozen pairs. Lincoln, with a population of 11,882, bought only 51 dozen pairs. Quincy, with a population of 35,978, only bought 80 dozen pairs. We sold no Patriot shoes to any of these customers. There are 8,215 shoe dealers in the State of Illinois.

The next sheet is for the customer of the McElwain [fol. 442] Company in the State of Michigan. The McElwain Company sold in the State of Michigan, in the fiscal year 1921, a grand total of seven dozen pairs of shoes at Detroit, Michigan. The state has a population of 3,668,412. Detroit is the largest city of this State, and there are 4,552 retail shoe dealers in the State of Michigan. The International Shoe Company did not sell any Patriot shoes to McElwain's customer in the State of Michigan.

The next sheet is for the State of Wisconsin, a state of 2,632,067 population. The McElwain Company had two customers in Wisconsin; both of these customers were located in Milwaukee. One of them bought 12 dozen pairs of shoes, and the other 74 dozen pairs. The International Shoe Company sold no Patriot shoes to either of these two customers. There were 4,275 retail shoe dealers in the State of Wisconsin.

The next sheet is the State of West Virginia. West Virginia has a population of 1,463,701 people. Considering the

Island Creek stores as one customer, and the chain of O. J. Morrison stores as one customer, there were eight customers of the McElwain Company in five cities and three towns. Of the 805 dozen pairs of shoes sold in the state, 589 dozen were sold in the larger cities of Clarksburg, Huntington, Charleston, Fairmont and Wheeling. These sales in the smaller cities and towns were mainly in the chain stores, which took 172 dozen pairs, leaving 44 dozen pairs that were sold to one customer in the town of Kermit. We sold 5 3/12 dozen pairs of shoes to one of these customers, namely, to the Consolidation Coal Company of Fairmont, West Virginia. There are 3,208 retail shoe dealers in the State of West Virginia.

The next sheet is for the State of Kentucky, having a population of 2,416,639. The McElwain Company sold, in 1921, eight customers in three cities and two towns a total of 501 dozen pairs of shoes. Of the 501 dozen pairs sold in the State of Kentucky, 369 dozen pairs were sold in the three larger cities of Lexington, Paducah and Louisville. Prestonburg, a town of 1,667 people, bought only 77 dozen pairs. Fulton, a city of 6,015, only bought 55 dozen pairs. The International Shoe Company sold no Patriot shoes to [fol. 443] any of these McElwain customers. There are 3,990 retail shoe dealers in the State of Kentucky.

The next sheet is for Tennessee. The McElwain Company sold, in 1921, 15 customers in the State of Tennessee in the three largest cities of the state and four small cities a total of 1,070 dozen pairs of shoes, of which total 803 dozen pairs were sold in Memphis, Nashville and Knoxville, the three large cities in the state. Only 267 dozen pairs were sold in the other four smaller cities, the smallest of these having a population of 3,629 people. The State of Tennessee has a population of 2,337,853. The International Shoe Company sold no Patriot shoes to any of the McElwain customers in the State of Tennessee. There are 2,786 retail shoe dealers in the State of Tennessee.

The next is the State of Virginia with a population of 2,309,187. The McElwain Company sold, in 1921, seven customers in Virginia located in six cities and towns a total of 791 dozen pairs of shoes, out of which 752 dozen pairs were sold in the larger cities of Richmond, Norfolk and Roanoke. 658 dozen pairs of those were sold in Nor-

folk. Danville, with a population of 21,539, took 19 dozen pairs. Martinsville, with a population of 4,075, took 10 dozen pairs. The International Shoe Company sold no Patriot shoes to those customers of McElwain. There were 4,659 retail shoe dealers in the state.

The next one is the State of North Carolina, having a population of 2,559,123. McElwain had seven customers in five cities, and the sales were about evenly divided between the five cities, with a total of 280 dozen sold in the State. 163 dozen pairs were sold in cities of more than 10,000 and the other 117 dozen were sold in two towns having a population of 9,771 and 5,952. The International Shoe Company sold no Patriot shoes to any of these customers, and there are 3,275 retail shoe dealers in the State of North Carolina.

The next sheet covers South Carolina with a population of 1,683,724. The McElwain Company had sold 22 customers in 17 cities and towns a total of 1,429 dozen pairs, of which total 781 dozen pairs were sold in the four largest [fol. 444] cities, Columbia, Spartanburg, Anderson and Greenville. The other 638 dozen were distributed about the other 13 cities and towns. The International Shoe Company sold 1¼ dozen pairs of Patriot shoes to three of these customers of McElwain, which customers were John McSween, Timmonsville; McSween Mercantile Company at Lamar; E. P. & F. A. Davis, Columbia. There are 2,529 retail shoe dealers in the State of South Carolina.

Q. 774. Mr. Rand, before you leave South Carolina, I notice your total of shoes is 1,429, but you have testified to the figures on the sheet itself as 1,445. Explain that difference.

A. Burlington, North Carolina, evidently was listed on here by mistake, and 16 dozen sold at Burlington as shown by this sheet have been deducted, making a total of 1,445.

[Brief recess.]

A. (resumed). The next sheet is for the State of Georgia with a population of 2,895,832. Considering the eight Churchwell Brothers chain stores as one customer, McElwain had 39 customers in 29 cities and towns, and 2,437 dozen pairs were sold in the state. 1,408 dozen pairs were sold in eight cities of over 10,000 population each, the

larger sales being made in Atlanta, Savannah and Augusta. The balance, 1,029 dozen pairs, were distributed in the smaller cities. 417 dozen pairs went to the six stores of the Churchwell chain, leaving only 612 dozen pairs distributed to 15 customers in 15 towns. We sold 49 pairs of Patriot shoes to four of these customers, namely, customers located at Lindale, Monticello, Greenboro and Dawson. There are 3,742 retail shoe dealers in the State of Georgia.

The next is the State of Alabama, with a population of 2,348,174. McElwain & Company had two customers in this state, and these two customers were located in two towns; the Simon Shoe Company located at Mobile bought 87 dozen. The Guarantee Shoe Company at Birmingham, Alabama, bought 342 dozen, making a total of 429 dozen pairs sold in the State of Alabama. There were no sales by McElwain in any small town. The International Shoe Company sold no Patriot shoes to either of the two customers of McElwain in the State of Alabama.

[fol. 445] Q. 775. How many retail shoe dealers are there in the state?

A. 3,156 retailers of shoes in the state.

Q. 776. Mr. Rand, did McElwain Company sell any of its shoes in Gadsden, Alabama?

A. The records do not show that they did.

Q. 777. Did International Shoe Company sell any of its shoes in Gadsden, Alabama?

A. Yes; we have several good customers there.

Mr. Brindley: That is a good town.

The Witness: The International Shoe Company considers it a good town. The next is the State of Mississippi, my native state, having a population of 1,790,618. The McElwain records indicate that in the State of Mississippi 19 dozen were sold; but in my judgment this record is a mistake, for 17 of the 19 dozen is listed as having been sold in Beloit, Mississippi, a town with which I am not familiar, and which I could not locate. If this be an error, the total sales of McElwain Company for the fiscal year 1921 then appear to be limited to two dozen pairs sold to Abe Rubel Company at Corinth, Mississippi. We sold no Patriot shoes to that customer. There are 2,596 retail shoe dealers in the State of Mississippi, and the International Shoe

Company, during the year 1921, shipped into the State of Mississippi approximately $3,500,000 worth of shoes.

The next one is Louisiana. In 1921 McElwain sold 107 dozen pairs of shoes to two customers in the State of Louisiana; both customers were located at New Orleans, and, as stated before, the total sales were limited to 107 dozen. We sold neither of these two customers any Patriot shoes. There are 2,378 retail shoe dealers in the State of Louisiana, which has a population of 1,798,509 people.

The next is a tabulation for the State of Arkansas, in which McElwain sold, in 1921, 131 dozen pairs of shoes to four customers located in three large cities. Of the 131 dozen pairs sold, 40 dozen were sold in Little Rock, 76 dozen in Fort Smith, which has a population of 28,811, and 15 dozen pairs were sold in Earle, Arkansas, which has a population of 3,000. There are 1,752,205 people in Arkansas. We sold no Patriot shoes to either of McElwain's [fol. 446] customers in said state, and there are 2,639 retail shoe dealers in Arkansas.

The next is the State of Missouri, having a population of 3,404,055. In Mr. King's hurried tabulation of this state he testified that McElwain had 46 customers. An actual check shows that in 1921 McElwain had 36 customers in 16 cities and towns. Of the 36 customers 18 are in the city of St. Louis, and purchased, in that year, 4,508 dozen pairs. Of the total of 5,939 dozen pairs sold in the state, Kansas City took 986 dozen; St. Joseph, Columbia, Hannibal and Moberly took 266 dozen pairs. This shows that 5,760 dozen pairs out of a total of 5,939 dozen pairs were sold in the larger cities, leaving 179 dozen pairs which were distributed in eight smaller cities or towns. The International Shoe Company sold 7 9/12 dozen pairs of Patriot shoes to eight of these customers of the McElwain Company. There are 5,150 retail shoe dealers in the state.

The next sheet is that of Iowa, with a population of 2,404,021. There are seven customers of McElwain as of 1921, and these seven customers are located in four towns and cities. Of the total of 224 dozen pairs sold in the state, only five dozen pairs were sold in a town of less than 10,000 population, and this one town has a population of 9,427. We sold no Patriot shoes to these customers. There are 4,273 retail shoe dealers in the state.

The next sheet is Oklahoma, with a population of 2,028,-283. McElwain had four customers in two cities and one town. Only 234 dozen pairs were sold in the whole year in the State of Oklahoma, and of that number 183 dozen were sold in the larger cities of Tulsa and Oklahoma City. Only 41 dozen were sold in the town of Ada, 8,012. None were sold in all other small towns of the state. There are 2,835 retail shoe dealers in the State of Oklahoma. The International Shoe Company sold no Patriot shoes to any of these customers of McElwain.

The State of Texas, with a population of 4,663,220. In Mr. King's testimony the statement was made that McElwain had 39 customers in the State of Texas in 1921. A careful check indicates that there were 37 customers, lo-[fol. 447] cated in 23 cities and towns, to whom a total of 1,664 dozen shoes were sold by the McElwain Company for 1921. Of the 1,664 dozen pairs of shoes sold, 1,431 dozen pairs were sold to 20 customers in 14 cities of over 10,000 population each, leaving only 233 doezn sold to eight customers in eight smaller cities or towns. The International Shoe Company sold 344/12 dozen pairs to two of these customers of McElwain. These customers were located at Taylor, Texas, and in Texarkana, Texas.

Q. 778. What is the number of retail shoe dealers in the state?

A. 5,502 retail shoe dealers in the State of Texas. The next is the State of Florida. Mr. King made the statement that the McElwain Company had customers in four towns; a careful check shows there are only two, namely, Ybor City is a part of Tampa, and there are 10 customers who bought either in Jacksonville or Tampa. No sales in the smaller cities or towns. The population of the state is 968,470, and there are 1,321 retail shoe dealers in the state. The International Shoe Company did not sell its Patriot shoes to any of the customers of McElwain.

The next is Minnesota. In the fiscal year 1921 McElwain & Company sold, in the State of Minnesota, seven dozen pairs of shoes to one customer, the Home Trade Company of Minneapolis, Minnesota, There are no sales in any other of the cities or towns of the state. Minnesota has a population of 2,387,125, and there are 3,506 retail shoe dealers in the State of Minnesota. The International Shoe Com-

pany was not successful in selling McElwain's customer any Patriot shoes in that year.

The next is Utah, with a population of 449,396. There were two customers of the McElwain Company in 1921 in Utah, both being located in Salt Lake City and the total sales in the state being 225 dozen pairs for that year; no sales in the smaller towns of the state. There are 606 retail shoe dealers in Utah. The International Shoe Company sold no Patriot shoes to either of McElwain's shoe customers in that state.

Colorado, with a population of 939,629. In 1921 McElwain had one customer to whom it sold 49 dozen pairs for the year. There were no sales to any other customer, or [fol. 448] to any locality in the State of Colorado other than Denver. In the state there are 1,252 retail shoe dealers and the International Shoe Company sold no Patriot shoes to McElwain's Colorado customer.

The State of Washington, with a population of 1,356,621. McElwain sold, in 1921, seven dozen pairs of shoes in the State of Washington, and all of this number were shipped to one customer located at Spokane. No sales in smaller towns or cities. There are 1,471 retail shoe dealers in the State of Washington. The International Shoe Company sold no Patriot shoes in 1921 to the McElwain Washington customer.

Oregon, with a population of 783,389. McElwain had, in 1921, one customer located at Oregon City, to whom his sale of 66 dozen pairs was made in 1921. No sales were made to any other part of the State of Oregon during the entire year. The International Shoe Company sold no Patriot shoes to that customer of McElwain. There are 830 retail shoe dealers in the State of Oregon.

The State of California, with a population of 3,426,861. There were 11 customers in 1921 sold by the McElwain Company in the two large cities of Los Angeles and San Francisco; no sales in the smaller towns. There are 2,637 retail shoe dealers in the State of California. The International Shoe Company sold 1 9/12 dozen pairs of Patriot shoes to one of the McElwain customers located at Los Angeles, McElwain selling that same customer eight dozen pairs of shoes during that year.

Newfoundland, McElwain sold 34 dozen in 1921. No Patriot shoes were sold to that customer by the International Shoe Company.

Honolulu, Hawaiian Islands. In 1921, McElwain Company sold 1,614 dozen pairs of shoes to the American Factors Company. The International Shoe Company sold to that customer no Patriot shoes in that year.

That completes the tabulation of these 38 States.

Q. 779. Mr. Rand, have you there a summary showing the number of towns of less than 10,000 people in which W. H. McElwain Company sold, and showing the number [fol. 449] of dozen pairs sold in these towns, arranged according to the names of the States?

A. I have.

Mr. Blake: We offer that as Respondent's Exhibit 47.

[Summary showing number of towns of less than 10,000 containing McElwain customers marked "Respondent's Exhibit 47."]

Q. 780. Mr. Rand, I will ask you to state the number of towns in the United States with a population of 10,000 people in which the McElwain Company sold its product in 1921, according to Exhibit 37?

A. Eighty-eight.

Q. 781. What was the total number of dozens of pairs of shoes sold by McElwain Company in these towns of less than 10,000 population in the year 1921?

A. 3,753 dozen.

Q. 782. How many States are listed there?

A. Eighteen.

Q. 783. Now, what about the other 30 States in the United States, as to sales in the smaller towns?

A. McElwain & Company sold in none of the towns of less than 10,000 people in the other States. Of their total sales in the United States,—76,315 dozen pairs,—over 95 percent were in the cities of over 10,000 population.

Q. 784. Mr. Rand, have you got a general summary of the information which you have given in the preceding pages here in your comments on the sheets of Respondent's Exhibit 37?

A. There is a summary of the population.

Mr. Blake: We offer that as Respondent's Exhibit No. 48, there being two sheets.

[Summary of populations, and so forth, marked "Respondent's Exhibit 48."]

Q. 785. Mr. Rand, explain the different columns there, so that we will understand just what they mean.

A. Column No. 1 indicates the state. Column No. 2 shows the population of each state according to the 1920 census. Column No. 3 is the number of retail shoe dealers in the state. Column No. 4 is the number of shoe dealers in each state buying from McElwain in 1921, as shown by Respondent's Exhibit 37. Column No. 5 indicates the number of retail shoe dealers included in column No. 4 to whom [fol. 450] the International Shoe Company sold Patriot shoes in the fiscal year 1921. Column No. 6 indicates the number of retailers in the state who bought International Shoe Company's shoes of any and all kinds; and these figures in this last column are approximated.

Q. 786. Now, as to column No. 6, what is the total of column No. 6, the number of retailers who bought International Shoe Company's shoes of any and all kinds?

A. 78,242 retailers.

Q. 787. And these figures as to each state are only approximated?

A. Yes.

Q. 788. You don't claim that they are absolutely accurate?

A. No; those lists we have for mailing purposes and they show all the names. For simplification, when customers are added they are added to the list, and when they are eliminated they are taken out of the list and it is never accurate for a given time; so these are approximately correct.

Q. 789. Mr. Rand, this whole analysis in these summaries has been based on the men's dress shoes of the Patriot line. What about boys' shoes?

A. We were not making boys' shoes of that class at that time.

Q. 790. That is, in 1921?

A. In 1921.

Q. 791. Mr. Rand, how long did the depression which hit the shoe industry in 1920 and 1921 continue?

A. It is not over yet.

Q. 792. Since the acquisition in 1921 has there been any time when the McElwain Company would have been able to stand on its own legs, if it had been set free to do so?

Mr. Brindley: I think that is quite a speculative question and calls for a good deal of speculation in the answer.

Mr. Blake: I think not, colonel. He is familiar with the financial situation of the McElwain Company since the time it was acquired.

Mr. Brindley: I do not dispute that. I have no doubt of his information as to what he knows; but as to his ability to testify accurately as to things that he does not know, I doubt considerably.

Mr. Blake: I think he knows that.

[fol. 451] Q. 793. Can you answer that question, Mr. Rand?

A. I think I can.

Q. 794. All right, let us have the answer.

A. I do not think that it is even debatable whether they would be able to stand or not. They were completely out of the running. The only difference, as I see it, in McElwain in the latter part of 1921, after they were taken over by the International Shoe Company, and the latter part of 1920, before they were taken over, was that in the latter part of the succeeding year they knew they were broke, as the preceding year they were broke and didn't know it,—overwhelmingly broke,—and unfortunately I didn't know it so well in 1920 as I did in 1921.

Q. 795. Mr. Rand, in May 1921, how many shoe manufacturers in the United States made shoes which are in the generic class termed "men's dress shoes"?

A. That is a pretty broad question and a rather difficult one to answer.

Q. 796. Can you name some of the shoe manufacturers?

A. Oh, I know a great many shoe manufacturers who, broadly, manufacture shoes in that class; and I should say there were 100, or several hundred, in that broad class.

Q. 797. How many of those manufacturers in the broad class of men's dress shoes made more shoes of this general

class than were made by International Shoe Company in 1921?

A. I cannot answer that definitely. The moment a question of that type is put to me, I think of the specialty shoe manufacturer concentrating on one line of shoes, as contrasted with the broad general line that we have. My mind naturally turns to Brockton as a whole community in which the business in some old companies there is all concentrated on practically one type of shoe. I know a great many of these men and know them personally. Out of Brockton there is T. D. Barry, making about 3,000 pairs of shoes a day; Churchill & Alden, about 3,000; W. L. Douglas making about 5,000 pairs a day; Charles A. Eaton, about 7,500 pairs a day; George E. Keith, who makes the Walk-Over shoe and some ladies' shoes,—he is manufacturing about 15,000 pairs a day of men's dress shoes; E. E. Taylor & Company of Brockton, about 5,000 pairs of men's [fol. 452] dress shoes. There is F. M. Hoyt at Manchester, New Hampshire, where we have a factory manufacturing a similar line of dress shoes,—I think his output is about 6,000 or 7,000 pairs a day. Here in Boston there is Rice & Hutchins with a capacity of 10,000 or 12,000 pairs of shoes of the type we are discussing; L. Q. White, who handles about 5,000 pairs of shoes, of Bridgewater, Massachusetts; E. T. Wright of Rockland, about 5,000 pairs; B. A. Corbin, Webster, Massachusetts, about 6,000 pairs a day. The Florsheim Shoe Company of Chicago, making about 7,000 pairs of shoes every day, all of one type; J. P. Smith of Chicago, making about 3,000 pairs of shoes per day,—making as many of those shoes as we are and they are considered not a large company. You could take a tabulation of the shoe industry and pick out a great many of them.

Q. 798. What was the daily capacity of the W. H. McElwain Company in shoes of this general class?

A. Well, their rated capacity at the time we purchased the company was about 38,000 pairs and they had been making in excess of 30,000 pairs per day.

Q. 799. What were they actually producing in May 1921?

A. Between 6,000 and 8,000 pairs of shoes a day, in all of their factories,—total.

Q. 800. Considerably less than the capacity?

A. Oh, yes.

Q. 801. How did that compare with the number of shoes of the same general class that were made by the International Shoe Company, daily, in May 1921?

A. Well, that was more than twice as many as we made in our Patriot production. Speaking of the general class —and we are comparing our Patriot shoes with theirs,—we are only doing so to get somewhere. I don't think there is any comparison between the two lines of shoes.

Q. 802. Do you know what the total number of pairs of shoes of this general class was that were made by the International Shoe Company in the year 1921?

A. Well, I had these figures actually taken from our records. For the year ending November 30, 1921——

Q. 803. That is the International Shoe Company's fiscal year, is it?

A. Yes. The International Shoe Company produced, of [fol. 453] the Patriot type of shoes, 754,835 pairs, or 62,-903 dozen pairs. To give some indication of the uniformity of production, I compare that with the fiscal year preceding, the year ending November 30, 1920, in which the International Shoe Company produced of this same type of shoes, 757,812 pairs, or 63,151 dozen pairs.

Mr. Brindley: You mean that is all the shoes they produced, altogether, of a certain type?

The Witness: Shoes of that type.

Q. 804. Mr. Rand, I hand you a sheet of paper and ask you if you can identify that?

A. That is Respondent's Exhibit 28, submitted in the case in the hearing in St. Louis,—or a copy of it.

Q. 805. Mr. Rand, from that exhibit give us the total production in the United States, in pairs, for the year 1921.

A. 286,771,101 pairs.

Q. 806. That is the figure as reported in the United States Census Bureau report?

A. Yes, sir.

Q. 807. Does that mean that there were 286,771,101 pairs of men's dress shoes produced, or that number of leather shoes of all classes, types and kinds?

A. That means all classes, types and kinds, or men's, women's, children's, misses', boys' and infants' shoes.

Q. 808. Referring to this exhibit again, please state what percentage of all the shoes of all classes in the United States were made by the International Shoe Company in that year.

A. 7.34 percent.

Q. 809. What was the number of pairs of shoes of all kinds produced by International Shoe Company in 1921?

A. 21,049,171 pairs.

Q. 810. And you say that in 1921 International Shoe Company made 754,835 pairs of men's dress shoes?

A. Yes.

Q. 811. Then what percentage of your whole production was men's dress shoes?

A. 3.6 percent.

Q. 812. In other words, about 96.4 percent of the International Shoe Company's production was shoes other than men's dress shoes?

A. Yes.

Q. 813. Now, Mr. Rand, tell us what is the percentage of [fol. 454] men's dress shoes produced by International Shoe Company as compared with the total production of all shoes of all kinds in the United States.

A. As of 1921, or now?

Q. 814. 1921.

A. Well, our records show that, of all kinds of shoes, that the total number of pairs produced by the International Shoe Company is 7.34 per cent, and of the International Shoe Company's own production 3.6 per cent were men's dress shoes of the Patriot type. Then 3.6 per cent of 7.34 per cent shows that the quantity of dress shoes of the Patriot type manufactured by the International Shoe Company in the year 1921 represented approximately one-fourth of one per cent of the total production of all kinds of leather shoes in the United States.

Q. 815. Mr. Rand, can you give us a similar percentage as to the total of men's dress shoes produced in the United States?

A. There is no source from which I can get that information accurately.

Q. 816. Mr. Rand, what does Respondent's Exhibit 28 show as to the percentage of pairs of shoes produced by the McElwain Company in 1921, as compared with the pro-

duction of all shoes of all kinds in the United States in that year?

A. McElwain's production for 1921, in pairs, was 3,819,255 pairs, which represented 1.33 per cent of the total production of the country of all kinds of shoes.

Q. 817. That is, McElwain shoes were principally men's dress shoes, so that practically that whole percentage would be men's dress shoes, would it not?

A. Yes.

Q. 818. From these percentages, and the other information that you have given as to other manufacturers of these men's dress shoes, would you say that, in 1921, the International Shoe Company was a predominant factor in the manufacture of shoes of this general class?

A. You confuse me with the word "general"——

Q. 819. I mean, men's dress shoes.

A. No; we were a comparatively small factor in that broad field.

Q. 820. Mr. Rand, will you state a little more clearly just what effect the refusal of the International Shoe Company [fol. 455] to stamp the names of retailers on the shoes had on the sales to the larger retailers? Explain a little more clearly than has been explained heretofore.

A. Well, that is a very simple proposition. The large retailer in the large cities, who has his shoe store in the best retail streets of the city particularly, insists on advertising his own name, and not the name of the manufacturer. He would not buy shoes from a manufacturer under the manufacturer's name, because of the very sound reason that his overhead cost and expenses are larger and he is unwilling and unable to compete with the man in the outlying districts, with cheaper rent and cheaper property; and, whatever his costs may be, our experience with him has been a positive refusal to buy our merchandise except under their own names; and we were equally positive in the refusal to put their own names on it, and we did not come together. We are just as far apart as the ocean.

Examiner Bennett: He was able to get those shoes from McElwain and other concerns on which he could have his own name placed?

The Witness: Yes; they have gone out for a number of years and sought that type of business.

Q. 821. Since May 1921, what has been the trend of prices of the shoes sold by the International Shoe Company?

A. It has been downward.

Q. 822. Does that include the shoes that were formerly made by W. H. McElwain Company,—that is, the shoes that are now produced in the McElwain Company factories?

A. Yes.

Q. 823. Mr. Rand, you heard Mr. Warren testify this morning concerning the difference of $1,000,000 between the amount stated in the notice of the stockholders' meeting of W. H. McElwain Company and the actual final offer made to W. H. McElwain Company for its assets. That is, the notice stated to the stockholders that the offer from the International Shoe Company was for $3,063,000 and some odd dollars, whereas the offer as finally acted upon,—the one dated June 4,—was for $4,063,000 and some odd dollars. Can you explain why that $1,000,000 excess came in there?

A. I think I can.

[fol. 456] Q. 824. All right, sir.

A. In figuring out the value of the net assets of the McElwain Company, the net value of these assets indicated that they were worth $2,563,125.89, plus the obligations of the company, which were in excess of $11,000,000—nearly $12,000,000 additional. There were a few outstanding stockholders who had not surrendered the stock of the McElwain Company, and I went over these figures gotten up by our auditing department, and accepted $2,563,125.89 as representing the actual value of these assets, over and above the liabilities of the company. We did not wish to subject ourselves to criticism from the few outstanding stockholders, and particularly one who had been trying to hold us up; so the suggestion first came that we increase this offer by half a million dollars, and that was done,—done for a day or two, or some little time. Then the question came up,—the full realization that the International Shoe Company owned practically all of the stock of the McElwain Company, aside from these 50 shares owned by Mr. Wigglesworth down here, and 35 or 50 shares of the first preferred that had not been turned in; and we thought we would increase the offer, not by half a million dollars, but by $1,500,-

000, and that it would not make any difference, in a way, because the overwhelming part of the stock was owned by us, and we hoped that all of it would be owned by us,—by the International Company. So an easy handling of $1,000,000 or $1,500,000 difference in the voluntary increase of an offer for the assets was occasioned by the facts I have just given; and I would not have hesitated, then or now, to have increased it another $1,000,000, if it would have had the wholesome effect on a few outside stockholders, who could see that we were offering this over and above and beyond anything that they could get from anybody else. That is what we had in mind, and that is what we did.

Q. 825. Then as a matter of fact there were two offers sent to the McElwain Company, one upon which the notice was based, and another later, which included an additional $1,000,000?

A. I think the first offer was written up some time in May. This first amount follows a careful analysis of the [fol. 457] value—the net value—of the assets of the company; and the increase that was in there was to avoid any question or unfavorable comment by the few stockholders that had not yet turned in their stock, and particularly one Mr. Wigglesworth of Boston.

Mr. Blake: I believe that is all.

Cross-examination.

By Mr. Brindley:

X Q. 826. The first offer of the International Shoe Company to buy the assets of the W. H. McElwain Company was for $3,063,125.89; is that correct?

A. The first amount contemplated—the first amount thought of by the International Shoe Company as the amount which the company should offer for the assets of the McElwain Company, after assuming its liabilities, was $3,063,125.89.

X Q. 827. Now, that amount that the International Shoe Company was willing to pay was communicated to the W. H. McElwain Company?

A. These figures were made up in the latter part of May. I don't know whether this was communicated to the

McElwain Company, or if it was—I think it was communicated to Mr. King, who was an officer of the W. H. McElwain Company, and discussed by me with Mr. King and Mr. Blake.

X Q. 828. Now, you saw the notice of the special meeting of stockholders sent out to the stockholders of the W. H. McElwain Company, reciting an offer from the International Shoe Company of $3,063,125.89, didn't you?

A. I saw that notice yesterday or today for the first time.

X Q. 829. Now, that was sent out June 11, 1923, according to the testimony of the president of the W. H. McElwain Company?

A. I heard that testimony.

X Q. 830. Well, was the first offer, then, from the International Shoe Company to the W. H. McElwain Company to purchase its assets and assume its liabilities for this sum of $3,063,125.89?

A. Well, I don't know whether that was the first or not; but I know when we offered them $1,000,000 more they could very easily reject the small offer and accept the large one.

Mr. Brindley: That is all right, but I have not yet gotten [fol. 458] up to the larger offer. I have to work up by degrees; we have been talking millions, and it rises slowly.

X Q. 831. That was the first offer made to the company, was it not, Mr. Rand?

A. The things that are fixed in my mind is what we paid for it; and I had forgotten, until this morning, that any such offer was made.

X Q. 832. But it seems that it was made?

A. It seems so; yes.

X Q. 833. Now, that notice of the special meeting to be held on June 20, 1923 was sent out on June 11, 1923; and the offer dated June 4, 1923, for $4,063,125.89, had not been written, had it?

A. I think so.

X Q. 834. Well, it was not in the hands of the W. H. McElwain Company, was it?

A. I cannot testify to whose hands it was in; but that offer of June—I am speaking from memory—I think it was June 4——

X Q. 835. That is correct.

A. It was $4,063,125.89.

X Q. 836. That is correct, dated June 4.

A. Yes.

X Q. 837. Now, the notice dated June 11, 1923, sent to the stockholders for the special meeting of June 20, recites that they had an offer from the International Shoe Company for $3,063,125.89; so does it not necessarily follow that on June 11, 1923 the W. H. McElwain Company had not received your offer dated June 4, 1923?

A. I do not think it necessarily follows.

X Q. 838. They evidently did not know of it?

A. No, I don't think that is a necessary conclusion.

X Q. 839. Now, you stated a moment ago, did you not, that the first offer, according to the best of your recollection, was made or submitted during the month of May 1923?

A. Well, it is a question of what you mean—you may interpret an offer being made or submitted quiet differently from the way I would interpret it. I have previously testified to the fact that I had personally wanted to work out a given plan. I did start with a careful accounting made by our auditors of the net value of the business and assets of W. H. McElwain Company, which were found to be $2,563,125.89. Mr. Blake was leaving St. Louis for Boston, and we had prepared an offer to be submitted to the W. H. [fol. 459] McElwain Company in an amount in excess of the net value, as I have just described it. I have no memory, except by looking at the letters, of what that was. I do recall that *the* first added something to the net value, to satisfy outstanding stockholders,—or not to satisfy them, but to prevent unjust criticisms and complaints that might arise from some disgruntled stockholders.

X Q. 840. Two other stockholders, holding 85 shares; one of 35 and the other of 50?

A. One of whom had been threatening us for over two years.

X Q. 841. One Mr. Wigglesworth?

A. One Mr. Wigglesworth; one of the old families of New England.

X Q. 842. Who held 50 shares of common?

A. Yes.

X Q. 843. And all the rest of the stock outside of that held by the International amounted to 35 shares of the first preferred?

A. Yes.

X Q. 844. And isn't this correct: After a careful consideration of the assets and the liabilities, you and your associates determined that the assets of the W. H. McElwain Company, after the International Shoe Company assumed the obligations of the W. H. McElwain Company, were worth to the International Shoe Company the sum of $2,563,125.89?

A. We figured—we did not have any conference over that; that was absolutely the result of careful accounting. We knew they were worth that to anybody.

X Q. 845. And, of course, being worth that to anybody, they were worth it to the International Shoe Company?

A. Yes.

X Q. 846. Now, to avoid any criticism, you say, from these stockholders who held 85 shares of the stock, you simply added $500,000 to your account, didn't you?

A. When I saw that letter this morning—that document this morning, I recalled that; the only thing that I remembered, jumping over the times, and with something else to do in the meantime, was the net value and our final offer; and I do not recall any steps and have no knowledge,—the matter was gone over with Mr. Blake,—these two steps,—and it was perfectly consistent, from my standpoint, then and now, that in our numerous conferences if we had decided to offer $1,000,000 for the assets of that company, of [fol. 460] which we held considerably over 99 per cent, I should not have hesitated at all to do it, without feeling that I was a great philanthropist.

X Q. 847. Because——

A. For the reason I have just stated.

X Q. 848. Because every dollar you increased the amount you offered for that, you increased the amount the International Shoe Company would receive?

A. Certainly so, at that time, because we did not know what we were going to do at that time.

X Q. 849. And the increased amount that was paid to these other stockholders holding 85 shares from the whole amount was very small, was it not?

A. Yes, sir, exceedingly small.

X Q. 850. Sure.

A. And we had been—for a year and a half or two years I had personally been urging the final disposition of the McElwain Company.

X Q. 851. I do not dispute that.

A. Well, I am affirming it.

X Q. 852. It is these figures are what I am interested in now. I want to get some explanation here of why it was and how it happened that the officers of the W. H. McElwain Company, on June 11, 1923, asserted in writing that they had an offer from the International Shoe Company to purchase their assets and assume their liabilities for the sum of $3,063,125.89. Now, isn't it true, Mr. Rand—they put that in that notice of June 11, 1923 because that is the only offer they had at that time?

A. I don't think that is true; no. Speaking from memory and with a good many things intervening, I think that Mr. Stanley King, who had full authority in the first half of June to carry out the details of this trade, probably had in his possession the offers of the International Shoe Company, which had been gone over with Mr. Blake prior to the time he left St. Louis for Boston; and I am presuming that—I have no knowledge of whether he communicated that to Mr. Warren or not.

X Q. 853. But there just still remains the difference of $1,000,000 in these offers that incites my curiosity.

A. Well, I have explained why the $1,000,000 was added there, and have a very good reason for it, I think.

X Q. 854. It is a very plausible reason, sir.

A. It is a fact.

X Q. 855. I am perfectly satisfied with your explanation [fol. 461] of why it was increased from $2,000,000 and some odd to $4,000,000. That is perfectly satisfactory to me, and I can readily understand it.

A. Well, what is it that you cannot understand, colonel, and if I can help you, I will.

X Q. 856. I cannot understand why the officers of the W. H. McElwain Company would send out a false report—a false notice of a special meeting to the stockholders of their company, and then testify to that falsity on the stand.

A. I don't think they would, either; I agree with you in that. I don't think they would send out such a false notice.

X Q. 857. Well, the figures are rather remarkable, are they not? A written offer of the International Shoe Com-

pany dated June 4, 1923, a copy of which was introduced in evidence in St. Louis without any question, shows that the amount offered to the W. H. McElwain Company for all its assets, the International Shoe Company to assume its liabilities, was for the sum of $4,063,125.89. Now, the records of the W. H. McElwain Company in evidence here certified to by their officers, and sworn to, show that the offer that the W. H. McElwain Company had from the International Shoe Company for the purchase of its assets and the assumption of its liabilities was for $3,063,125.89; the officers of the W. H. McElwain Company asserting that in writing on June 8, 1923, on June 11, 1923 and on June 12, 1923,—in writing.

A. But when it came to paying over the cash they were paid over the real amount that they sold it for, were not they?

X Q. 858. That is all right——

A. I am just getting at the implication of a false statement. I do not think they made any false statement.

X Q. 859. All the rest is easily explained. I can trace this increase right in, down, and we have proved that the offer for $4,063,125.89 was accepted and paid. That is in the record.

A. Yes; I volunteered that in my first testimony, very freely. I wish I could tell you——

X Q. 860. Now, isn't this true, Mr. Rand: Let us see if this will help refresh your recollection: when Mr. King was at St. Louis, following his trip to Washington about which [fol. 462] you testified at St. Louis, he was there authorized to begin negotiations and carry out this transaction——

A. He was not authorized at all.

X Q. 861. Was not he authorized to begin negotiations?

A. No, sir.

X Q. 862. Nothing whatever?

A. No, sir.

Mr. Brindley: Well, all right. Leave out that feature about the authorization entirely.

X Q. 863. When the matter was discussed, then, with you and Mr. Blake and Mr. King, and perhaps Mr. Johnson, was it not then that you arrived at the conclusion that you were willing to offer to the McElwain Company the sum of $3,063,125.89?

A. You are confused, colonel, in your recollection of the continuing of these steps. Mr. King did not come back to St. Louis. Mr. King had been to Washington and Mr. Blake was in Washington with him. Mr. King returned to Boston and did not return to St. Louis, and there was no such conference, and there was no such conference as you think of at which Mr. King was present. I wonder if that helps you?

X Q. 864. No; I don't care where it was.

A. I was neither there nor in St. Louis at that time.

X Q. 865. Then is this true: wasn't the first offer of the International Shoe Company for the purchase of the assets of W. H. McElwain communicated to the W. H. McElwain Company by Mr. King?

A. I don't know——

X Q. 866. And was not that done orally?

A. No; I think not. But as to—my first contact with that offer was working out these net assets, and going over it with Mr. Blake, where we saw, from our correct accounting, that the net assets were worth $2,563,125.89. That was prior to any plan that was eventually worked out,—entirely prior and independent of any plan. Mr. R. E. Blake and I discussed at some length how the International Shoe Company should handle these facts as shown by our figures. It seems that he then—it was just recalled to my mind yesterday or today, the two steps; first, the increasing the net value by $500,000 which had entirely escaped my mind, because we did increase it by $1,500,000. That discussion was [fol. 463] carried on between Mr. Blake and myself. Some time after that discussion Mr. Blake left St. Louis for Boston.

X Q. 867. Now, when was that, when he left St. Louis for Boston, when you had that discussion; wasn't that following his trip to Washington?

A. Yes.

X Q. 868. So, after his trip to Washington he did visit you at St. Louis?

A. I am talking about Mr. Blake; not Mr. King.

X Q. 869. Was Mr. King ever there?

A. Not after his trip to Washington. He has been there since then, but I mean in connection with this.

X Q. 870. While these transactions were going on?

A. Yes. I said "Blake" in my testimony, didn't I?

X Q. 871. You said Blake, but I thought Mr. King was also there.

A. No.

[Hearing adjourned to 10 a. m., Wednesday, June 18, 1924.]

Boston, Mass., June 18, 1924.

[Met pursuant to adjournment, 10 a. m.]

X Q. 872. Mr. Rand, can you identify the document which I hand you?

A. I can.

X Q. 873. What is it?

A. It is a copy, a photostatic copy, of the statement signed by the National Bank of Commerce of New York, to the International Shoe Company under date of June 1923, and evidently was mailed about July 1, 1923, as covering the transactions for the month of June. And further identified as Commission's Exhibit No. 12, Docket 1023, May 31, 1924.

X Q. 874. You have seen the original of docket 1023, Exhibit 12?

A. Yes, I have.

X Q. 875. This is a photostatic copy entered by agreement in lieu of the original, which was returned to you?

A. That is true.

X Q. 876. I notice on this statement of accounts, in the column of credits, two items, opposite which are words which I translate as "Deposited by Goldman, Sachs," and the next one "Deposited Goldman, Sachs Company." Those two credits amount to how much?

A. The first is for $486,483.33; the second for $487,125.

X Q. 877. And those figures are dollars?

A. Yes.

[fol. 464] X Q. 878. And they are credits to the account of the International Shoe Company?

A. They are.

X Q. 879. Have those credits any connection whatever with the transactions appearing on this sheet, Exhibit 12, which shows transactions of the International Shoe Company with the Bennett, Limited, or of the Bennett, Limited, with the International Shoe Company?

A. I don't know whether they have or not. I never checked up these statements. They are checked in our accounting department, and Goldman, Sachs are financial brokers through whom we sell quite a little commercial paper, and transactions with them are not uncommon, or are quite numerous. I have no recollection, or even knowledge, by looking at this, as to whether they have any bearing on the transactions about which you are talking.

X Q. 880. So far as you know, they have no connection whatever with the transactions with Bennett, Limited?

A. I am not expressing any opinion about it at all. I have no knowledge whether they have or have not. My knowledge now about those items is that it was not an uncommon thing for Goldman, Sachs to purchase our paper and deposit the proceeds of the paper wherever we might designate.

X Q. 881. Have you in your files a copy of the offer submitted by the International Shoe Company to the W. H. McElwain Company to purchase the assets of the W. H. McElwain Company, for the sum of $3,063,125.89?

A. I have not my file here, but I have the originals of the offer of May 24, 1923 in two forms, one for the gross amount of the assets and one for the net amount of the assets.

X Q. 882. Will you kindly let me see those documents?

A. Here is the original offer which you refer to [producing papers].

X Q. 883. The document which you hold in your hand and which is dated May 24, 1923 is the offer which was submitted by the International Shoe Company to the W. H. McElwain Company for the purchase of its assets and the assumption of its liabilities, is it?

A. That is an offer of May 24.

[fol. 465] X Q. 884. Is that the original offer?

A. That is the original first net offer. A subsequent higher offer was made.

X Q. 885. That offer recites that the International Shoe Company would pay to W. H. McElwain Company the sum of $3,063,125.89 for all its property and assets, and also assumes and agrees to pay all the liabilities and obligations of the W. H. McElwain Company, doesn't it?

A. Yes.

X Q. 886. And that offer also recites that the sum of $3,063,125.89 is arrived at by taking the total net values of the property, and assets as shown by the books and by an audit made by Marwick, Mitchell & Company as of April 30, 1923 and by adding thereto the sum of $500,000?

A. That is correct.

X Q. 887. Those are the amounts which you were testifying when we closed the hearing yesterday afternoon?

A. These accounts were mentioned yesterday afternoon and we were talking about the subject.

X Q. 888. And which you were trying to explain?

A. We were trying to recall and explain them.

X Q. 889. How was the offer of May 24, 1923 submitted or transmitted to the W. H. McElwain Company?

A. I cannot recall; but I got this letter this morning out of Mr. Stanley King's file, and I am convinced that this letter was either mailed to the McElwain Company, attention of Mr. Stanley King, or was brought to Boston by Mr. R. E. Blake. Which of the two, I don't recall.

X Q. 890. The copy of the offer which was introduced in evidence at St. Louis was dated June 4, 1923 and recites that the International Shoe Company would pay to the W. H. McElwain Company the sum of $4,063,125.89?

A. That is correct.

X Q. 891. And on the same conditions and stipulations as mentioned in the offer of May 24 where the sum of $3,063,-125.89 was made?

A. Without comparing the two I remember them as being the same in every respect except with regard to the stipulated amount, the offer of June 4 being $1,000,000 more than the offer of May 24.

X Q. 892. Why was the offer of May 24, 1923 increased $1,000,000?

A. The offer of May 24 had been gone over rather care-[fol. 466] fully by Mr. Blake, Mr. Jackson Johnson and myself, and Mr. Blake had left St. Louis for Boston either with this offer in his possession or it had been mailed at the time he left St. Louis. There had been a mistake made in copying the gross offer, there being two offers, one gross and the other net, and in Mr. Blake's absence Mr. Johnson and I, without consultation with anyone else, decided that we would raise the offer of the International Shoe Company by $1,000,000, and on June 4, 1923 that offer, increased by

$1,000,000, was written up and forwarded to Mr. Blake, who was then in Boston. The increase had been made without Mr. Blake's knowledge, without the knowledge of Mr. King or Mr. Clifford Warren.

- Q. 893. But I want to know why you and Mr. Johnson increased the offer $1,000,000?

A. For the reason, of which I testified yesterday, that there were some outstanding stockholders who were capitalizing the nuisance value of the few shares of stock which they had, and were making themselves a nuisance to the company by their threats and threatened attempt to put us to expense by a general accounting for the last two or three years. The International Shoe Company owned an overwhelming majority of the stock, and wanted to own all of the stock so that we could conduct our business in a proper way, without outside, and what appeared to us to be malicious, interference. And the increase of $1,000,000, since we were the large owners of the stock, in reality did not make a substantial difference to the company in the two offers. In my judgment and that of my partner Mr. Johnson, we felt that if we made a firm offer of $1,500,000 above the actual value of these assets as indicated on the auditor's books, that that act of itself would estop any stockholder from making the claim that he had been squeezed out and treated unfairly. That was the sole motive behind the increase in the offer of June 4 as compared with the previous offer of May 24. Both offers were founded primarily on the actual value of the assets as indicated by our books, of $2,563,125.89. And the reason I have given is the sole and only reason.

X Q. 894. Then, as I understand it, the offer of May 24, [fol. 467] 1923 was increased by the sum of $1,000,000 solely for the purpose of increasing the small amount which would go to the holders of the stock of the W. H. McElwain Company outside that held by the International Shoe Company?

A. Yes.

- Q. 895. In other words, to just be frank——

A. Which I am trying to be in my entire testimony.

-Q. 896. And I want to be now myself. —you expected trouble from those few minority stockholders, and you

wanted to increase the amount which they would receive upon what has been designated in this proceeding as the liquidation of their stock, so that they would have no cause for complaint?

A. I think that statement is not exactly as I feel and recall it. We did not expect trouble from the few outstanding preferred stockholders. The common stock of this company would not have been worth a cent had we increased it $4,000,000, and we did fear—we wished to avoid trouble from one particular common stockholder who held 50 shares of stock, with a full knowledge that it was not worth a cent, and who had refused the liberal offer which the company had previously made to him, as they had to all the other holders of the common stock. We did not anticipate any trouble from the holders of some 35 shares of preferred stock which were outstanding. There were difficulties and delays in the acquisition of that stock. I think one of the holders lived abroad. But there was no unpleasant controversy or misunderstanding about that. There were delays which, while they were to be regretted, did not seem to us to be anything other than delays.

- Q. 897. And, as you stated yesterday, it made no practical difference to the International Shoe Company as to the amount of money included in the offers?

A. I think I used the word "substantial". These descriptive adjectives are very similar.

- Q. 898. That it made no substantial difference because the International Shoe Company owning practically all the stock would in the last analysis have the money returned to it anyway?

A. Yes, as the holders of the stock.

Mr. Brindley: I believe that is all I want to ask Mr. Rand at this time.

[fol. 468] Redirect examination.

By Mr. Blake:

Q. 899. Mr. Rand, no arrangement with Bennett, Limited, had been made at the time, June 4, 1923, when this increase of $1,000,000 was added to the offer?

A. No; I never heard of Bennett, Limited.

Q. 900. Mr. Rand, can you clarify the situation as to why the offers dated June 4, 1923 had not come to the attention of Mr. Clifford P. Warren, president of the W. H. McElwain Company, prior to the time that he sent out the notice to the stockholders of the meeting to be held on June 30, 1923, and prior to the time that he wrote certain letters to Mr. Eben Ellison and to Lee, Higginson & Company in June, 1923?

A. I think I can. After yesterday's hearing I looked in my files, and Mr. R. E. Blake's files, Mr. Stanley King's files, and Mr. Warren's files, to ascertain as best I could the dates and the circumstances in the period between June 4 and June 13, 14 and 15, 1923, and I believe this statement to be accurate with regard to facts and dates. On Monday, June 4, or Tuesday, June 5, 1923, I mailed to Mr. R. E. Blake at Boston the proposals, both gross and net, for the purchase by the International Shoe Company of the McElwain assets. On Wednesday, June 6, Mr. Blake left Boston for New York, and had not received my letter enclosing the offers—I don't mean "letter", but had not received the gross and net offers dated June 4. Mr. King accompanied Mr. Blake to New York on June 6——

Mr. Brindley: You don't know that, do you, Mr. Rand? You were in St. Louis all that time, were you not?

Q. 901. Mr. Rand, you know that I was in New York conferring with Mr. King and George H. Burr on these dates, do you not?

A. I know that you were there as definitely as I know this morning that the National Bank of Commerce is still in New York, although there is a chance that an earthquake may have wiped it out last night.

Examiner Bennett: Go ahead, Mr. Rand.

Mr. Brindley: I am willing he should tell anything about it if he will only qualify his answer by stating how he got his information. I know that Mr. Rand would not make any mis-statement.

[fol. 469] Examiner Bennett: Just proceed.

A. (resumed). Thursday, June 7, Mr. Blake and Mr. King were in negotiations in New York, Mr. King leaving New York Thursday night, June 7, for Boston, Mr. Blake

remaining in New York City. Friday, June 8, Mr. Blake alone continued negotiations in New York City with New York bankers. Saturday, June 9, Mr. Blake left New York for St. Louis, for conference with my partner, Mr. Jackson Johnson, and myself, after failing to reach a satisfactory conclusion with the New York banker. Sunday, June 10, Mr. Blake arrived at St. Louis, having made the trip without hand baggage, which had been left in Boston on June 6 because Mr. Blake and Mr. King had expected to spend only one day, June 7, in New York city. Both Mr. Blake and Mr. King had planned on June 6 to leave New York city on the evening of June 7 and to return to Boston. On Monday, June 11, Mr. Blake conferred with Mr. Johnson and me at St. Louis, and on the night of June 11 Mr. Blake left St. Louis for Boston, arriving here in Boston June 13, at which time he received my offers, or the International Shoe Company offers signed by me, and dated June 4, 1924. As I recall it, Mr. Blake and I in the latter part of May 1923 had prepared and written up proposals for the purchase of the McElwain assets. Our audited figures show that the net assets were $2,563,125.89, to which we had in our first proposal added $500,000. While Mr. Blake was in Boston in conference no doubt with Mr. King and Mr. Warren, Mr. Jackson Johnson and I increased by $1,000,000 the International Shoe Company's previously proposed offer of $3,063,125.89, this bringing the International Shoe Company's net offer for the assets of the McElwain Company up to $4,063,125.89, which was the final and actual amount paid by the International Shoe Company to the McElwain Company for that company's net assets.

Q. 902. Mr. Rand, since you have been connected with the International Shoe Company, has there, in any of that period, been a protective tariff which has protected it in its product?

A. Not that I recall. There have been some proposed tariffs suggested. The International Shoe Company and I personally have taken an active part in opposition to any [fol. 470] tariffs. I don't believe in high tariffs.

Q. 903. In that same period has the International Shoe Company owned patents, licenses, privileges or exclusive rights of any kind which in any way gave it a monopoly over the manufacture of men's dress shoes?

A. No; the only rights given the International Shoe Company along those lines are the rights of trade names which we ourselves have.

Mr. Blake: That is all.

Examiner Bennett: I wanted to ask you about Exhibit No. 48. 1921 was a record low year with the McElwain Company, was it not?

The Witness: I cannot answer.

Mr. Blake: In what respect?

Examiner Bennett: With respect to production and sales.

Mr. Blake: Haven't we got another exhibit showing that?

Examiner Bennett: Yes, there are two exhibits showing this matter, but I wanted it as the basis of some further questions. It would appear that the capacity stated by you as 38,000 pairs a day would run something more than 9,000,000 a year, and the production of that year I believe was something over 3,000,000.

The Witness: Do you ask me if 1921 was the lowest production year? And, if so, the lowest over what period?

Examiner Bennett: For the several years before and after. Taking the fiscal year of the company, June 1, 1920 to May 31, 1921, wasn't that called a very low production period?

The Witness: The fiscal year 1921 was a low production year as compared with the fiscal years 1920, 1922 and 1923.

Examiner Bennett: Wasn't it rather the small part of their capacity?

The Witness: Yes; it had gotten down because of their financial condition and general business condition in their particular company—it had gotten down to where they had just about ceased to function.

Examiner Bennett: And their sales had fallen off very largely?

The Witness: I think their sales had fallen off very ma- [fol. 471] terially, and in addition thereto they were having a good many shipments returned to them.

Examiner Bennett: And the International Shoe Company kept up its production and sales that year pretty well, did it not?

The Witness: I think we increased our sales in number of pairs and our production also.

Examiner Bennett: Do you know as a matter of fact whether that decreased the number of States and the number of towns in which the McElwain Company did business in 1921, as compared with their usual business territory?

The Witness: I don't know as a matter of fact. I have a fairly general impression about it. I think it did not. I don't think it would narrow or limit the territory which they were covering. I think that they simply sold about the same people and sold them very much less than they had previously sold them, because they had very much less to offer them.

Examiner Bennett: You don't know that situation from first-hand knowledge or anything like that, do you?

The Witness: No; I have not made an investigation, but I am confident that they covered the same territory but covered it very much more thinly.

Examiner Bennett: Isn't it possible that they might have missed a good many towns and might have missed some States where they had customers?

The Witness: That would be possible, but I doubt if it is probable. I believe that a list of their customers would be indicative—a list of their customers in any given year would be indicative of the territories that they were covering.

Examiner Bennett: Now, in column 3 in this Exhibit 48, which is headed "Number of retail shoe dealers in the State", for what year were those figures?

The Witness: 1921.

Examiner Bennett: What is your meaning of "dealer" in that heading?

The Witness: That is the seller of shoes at retail, and that does not mean an exclusive retail shoe store, but it [fol. 472] may mean a general supply store that carries, among other things, a stock of shoes.

Examiner Bennett: Now, as to your column 6, no detail is referred to there. Do you know what that was made up for? What was it for 1921, 1922 or 1923, or when was it?

The Witness: All these figures are based on that period between May 31, 1920 and June 1, 1921, trying to cover and compare against McElwain's in the fiscal year 1921.

Examiner Bennett: It was intended that this should refer to 1921, was it?

The Witness: Do you mean column 6?

Examiner Bennett: Yes.

The Witness: Yes, sir.

Examiner Bennett: I see. There are some figures in that column which I don't understand. Take, for instance, Kentucky, 3,390 dealers are credited, and still you had yourself selling to 4,108 dealers. How was that? [The witness is making a computation.] And there is a like discrepancy in Tennessee and Mississippi, and a like discrepancy as to Texas, and a like discrepancy as to Oklahoma, and also as to Arkansas.

The Witness: These figures are taken from different sources. One is taken as I stated yesterday from an approximate record, a record that is approximately correct on the chain of names of all the customers that we have, which is used for mailing lists to our customers. And the other figures indicated in column 3 are taken from an entirely different source, and of course could not be changed by us to meet any inconsistencies which might be developed in our own figures. We have simply presented both figures as best we can.

Examiner Bennett: I understand. But there seems to be a spread of several hundred in this Texas case, for instance, and it would appear as though there was some want of accuracy somewhere other than in the figures in the number of dollars or the number you were selling to.

The Witness: My feeling about these figures is that they are broadly correct, and that I could not present them as [fol. 473] being literally accurate in every way. I could not say definitely the number of customers that the International Shoe Company has, although I have a broad and generally accurate knowledge of it.

Examiner Bennett: Then it would indicate that in some of these States the International Shoe Company is doing business with practically all dealers at least?

The Witness: While that might indicate it, I make no such claim, and I don't believe that such is the fact. I wish we were.

Examiner Bennett: Do you know what the fact is as to the situation with retail dealers. Is the retail dealer usu-

ally supplied by a single manufacturer, or supplied by several?

The Witness: Some follow one plan, of concentrating their business with one manufacturer; others try to pick out the best numbers made by several manufacturers, and try to use their individual judgment as to which is the best, and in my judgment make a serious mistake in so doing.

Examiner Bennett: Have you any observation as to the practice of the greater number of stores, confining themselves to a single manufacturer and distributing his goods exclusively in a certain line, at least, or whether they buy in smaller quantities from several manufacturers?

The Witness: I doubt if more than 25 or 30 per cent of the customers of the International Shoe Company buy exclusively from the International Shoe Company.

Examiner Bennett: That is, having in mind the lines which you handle?

The Witness: Having in mind the lines which we handle. They are solicited by numerous salesmen, and it is characteristic of a man after handling an article of merchandise for a number of years, which may be very satisfactory, if something new or a little different comes along it offers to him a temptation. And it is difficult to persuade the merchant to continue to concentrate his business in one place.

Examiner Bennett: Do they switch back and forth?

The Witness: In drawing the distinction between concentration and failure to concentrate, I don't mean that one of our customers who may have been buying our shoes for [fol. 474] several years exclusively, and then may buy from others—I don't mean that he quits us, but he simply mixes our stock up with that of other manufacturers.

Examiner Bennett: In a place, a small place where a dealer to whom you sell is selling to another concern, would you consider the dealer not on your books a potential customer?

The Witness: Yes; we sell, in many places of 2,000 or 3,000 people, to more than one customer.

Examiner Bennett: That is part of the competitive game, not only of selling more to each customer and getting him to distribute more, but in widening the number of customers with whom you deal?

The Witness: Yes, we are trying to do that.

Examiner Bennett: And part of the competitive game is extending your territory?

The Witness: Beyond the confines of the United States, do you mean?

Examiner Bennett: No, not necessarily. But take the situation with you before 1921, or even earlier. You were constantly extending your territory, were you not?

The Witness. Yes, we were extending our territory gradually and conservatively and soundly, as I see it, and we had pretty well covered the United States with the exception of the northeastern portion of the United States, which we had discussed many times and which I doubt if we ever could have covered or would have covered from St. Louis.

Examiner Bennett: You were in Pennsylvania pretty strongly at that time, were you not?

The Witness: Yes, more particularly in the western half of Pennsylvania.

Examiner Bennett: When you were extending your territory wouldn't you regard a manufacturer who was selling in the territory which you had been able to acquire and who was taking customers which might better come to you in your onward march, in extending your territory wouldn't [fol. 475] you regard him as a competitor?

The Witness: I don't see how a man or a company could be a competitor when we are not competing with them. And we are not even soliciting that trade.

Examiner Bennett: Were you not competing with them, if they were withholding some territory from you? I just want to get your viewpoint.

The Witness: No; I believe that, taking the facts and not speculating on them at all, in 1919, 1920 and 1921 the International Shoe Company was very much oversold, and it was not a question with us of getting more customers. It was a question with us of taking care in a proper way of those customers that we had sold, to their advantage and to ours. The most pressing need that our company had was additional shoes constructed under the standards of quality that we had fixed in the last twenty-five years for the product of our company.

Examiner Bennett: That was true at that particular time, but that was a situation capable of being remedied, was it not?

The Witness: That was a situation that was capable of—we could remedy it one way, by losing the orders. But we did not want to remedy it that way. We were trying to meet the needs of our customers by receiving the orders given to us and really trying to meet them fairly and quickly. The development of shoe manufacture in the West is of comparatively slow progress because we not only have to build the factories but to educate shoemakers.

Examiner Bennett: And the usual problem of the manufacturer is a mercantile problem, or merchandising problem, rather than of manufacturing,—that is, of finding customers?

The Witness: I think that the harder problem of the two, between manufacturing and distribution, is the problem of distribution. I think that there is a very essential difference between so-called shoe manufacturing in St. Louis, for instance, as compared with the shoe manufacturing of New England. The New England shoe manufacturer has most all of his experience founded on that of a manufac- [fol. 476] turer with comparatively little experience as a distributor. In other words in New England they learn to manufacture shoes first, and try to learn to distribute them secondly. In St. Louis, not only with our company, but with other companies I might say, the shoe companies were essentially distributors of shoes, and merchants, and they learned later to manufacture shoes and learned successfully to do so.

Examiner Bennett: Are there any shoe manufacturers in St. Paul, say, who are in competition with you?

The Witness: I think so.

Examiner Bennett. At the time that you were expanding your territory, when Roberts, Johnson & Rand were extending their shoe territory, and at the time that it had not yet got into Minnesota, they were meeting some St. Paul manufacturers on the borderline, were they not?

The Witness: I presume they were, through our salesmen. When I traveled, I did not happen to meet that territory.

Examiner Bennett: Where that condition prevailed where you were meeting the manufacturer from another territory on your borderline, and you are encroaching on him, on his usual sales territory, and he is probably en-

croaching on yours, wouldn't you consider them generally in competition with each other?

The Witness: You are speaking of St. Paul manufacturers now? I think so.

Examiner Bennett: That is an illustration.

The Witness: You happened to take a very good one for illustration. I know some of the St. Paul manufacturers and they were manufacturing a general line of shoes, and particularly work shoes, and it happened to be the field which our company was covering. I think that at least potential competition existed there.

Examiner Bennett: And wouldn't you find it a most effective kind of competition? Wouldn't you find the competition of a concern that had pretty thoroughly covered its territory and was extending its lines cautiously and gradually into your territory—wouldn't you find that rather [fol. 477] more difficult competition to meet than the competition of a concern that was trying to spread itself thinly all over the country?

The Witness: I don't know as I can answer that, in the light of the example which you have taken, because most all of those companies up there have been trying to sell themselves to the International Shoe Company and I have persistently refused to become interested in them.

Examiner Bennett: I think that is all.

Recross-examination.

By Mr. Brindley:

X Q. 904. Mr. Rand, will you show me, if you have it with you, the offer you made, the offer of May 24, 1923, made by the International Shoe Company to the W. H. McElwain Company for the purchase of all assets and property and the assumption by the International Shoe Company of the debts, obligations and so forth of the W. H. McElwain Company?

A. I have no offer as it was intended or actually made. I have an incorrect statement which does not represent the intention or the offer of the company at all.

X Q. 905. The offers, dated June 4, 1923, were made in what we have heretofore designated as the alternative?

A. Yes.

X Q. 906. In other words, there were two separate and distinct offers?

A. Yes, and the same thing was intended on May 24, but it was not so done and it was purely a question of carelessness.

X Q. 907. The offers of June 4, 1923, as heretofore proved in this proceeding, were two distinct offers, one for the purchase of all the assets of the W. H. McElwain Company free from liability and obligation, for the sum of $4,063,125.89——

A. That is correct.

X Q. 908. And the other offer was practically identical so far as terms and conditions went, but was for the sum of $16,537,821.91, the McElwain Company to pay and discharge all its obligations and liabilities?

A. Yes. Those offers were the same offers with the exception that in one the W. H. McElwain Company was to be relieved by the International of all of its obligations, and in the other the McElwain Company was to assume and liquidate all of its obligations itself, and the offers were intended to be the same with that exception.

[fol. 478] X Q. 909. The obligations of the W. H. McElwain Company being ascertained or fixed by the International Shoe Company as the difference between the amount of the two offers?

A. Yes, it was so intended.

X Q. 910. Did that same rule apply to the two offers dated May 24, 1923?

A. That was intended; yes.

X Q. 911. The first offer was for the one for the lowest amount of money, being for the sum of $3,063,125.89, the International Shoe Company to pay and discharge the obligations of the W. H. McElwain Company?

A. That is correct.

X Q. 912. What was the amount of that other offer dated May 24, 1923 and made by the International to the W. H. McElwain Company?

A. It should be $3,063,125.89 plus the obligations that the McElwain Company showed were outstanding as of April 30, 1921, according to Marwick, Mitchell & Company's audit.

X Q. 913. How much did that amount to in dollars and cents?

A. The two amounted to $15,537,821.91.

X Q. 914. The second, or the alternative offer, made to W. H. McElwain Company dated May 24, 1923 was that the International Shoe Company would pay the W. H. McElwain Company the sum of $15,537,821.91, as you have already testified?

A. I will testify that that was the alternative offer which we intended to make them.

X Q. 915. Which was in fact actually made, wasn't it?

A. Yes.

X Q. 916. But you mean to say now by "intended to make" is that the document you have with you does not correctly state that, and does not correctly show the terms which you designated as the offer?

A. That was our offer that was and would have remained the alternative offer had not Mr. Johnson and I changed both offers by $1,000,000.

X Q. 917. The two offers of May 24, 1923 were increased by the exact sum of $1,000,000?

A. Yes, sir.

X Q. 918. And the alternative offer finally submitted to the W. H. McElwain Company was for the purchase of all its assets, properties and so forth, the W. H. McElwain [fol. 479] Company itself to discharge all its obligations; that purchase to be for the sum of $16,537,821.91?

A. That is correct.

X Q. 919. In other words, the alternative offer was increased $1,000,000 for the same reason that the offer of $3,000,000 and some thousand was increased $1,000,000?

A. That is correct.

X Q. 920. This document dated May 24, 1923 is the actual offer which you submitted to the W. H. McElwain Company, isn't it?

A. Yes, sir.

X Q. 921. That is your signature at the bottom of it?

A. Yes.

Mr. Brindley: That is all. I want to offer that document in evidence, which has just been identified by Mr. Rand, with the understanding with counsel on the other side that as soon as I can do so after returning to Washington I will have that exhibit photostated, inserting a photostatic copy

of it in the record and returning this paper to the attorney for the respondent.

[Letter, May 24, 1923, International Shoe Company to W. H. McElwain Company, marked "Commission's Exhibit 14".

Five minute recess.]

CLIFFORD P. WARREN was recalled as a witness and testified further as follows:

Recross-examination continued.

By Mr. Brindley:

X Q. 531. Mr. Warren, will you examine the document before you, which is marked "Commission's Exhibit 14", Docket No. 1023, and tell me if you can identify it?

A. That is the original offer from the International Shoe Company to W. H. McElwain Company for the purchase of its property and assets.

X Q. 532. As a matter of fact, you mean that that is one of the offers?

A. Yes, that is one of the offers, the second of the offers.

X Q. 533. Dated May 24, 1923?

A. It is.

X Q. 534. Is this offer for the purchase of all the assets and the assumption of the liabilities, for a particular sum?

A. Yes, sir.

X Q. 535. For what sum?

A. $3,063,125.89.

X Q. 536. And that is the offer which you had before you when you issued the notice for the special meeting of the stockholders of the W. H. McElwain Company for June 20, 1923?

A. Yes.

[fol. 480] X Q. 537. After receiving this offer of May 24, 1923, marked "Commission's Exhibit 14", did you receive subsequently other offers from the International Shoe Company?

A. Yes, sir.

X Q. 538. I notice in examining the minutes of this special meeting of the stockholders of June 20, 1923, that no

mention is made of the offer of May 24, 1923 for the sum of $3,063,125.89; can you explain that?

A. I don't believe that is entirely true. You will find on page 339 of the minutes of that meeting a statement in the minutes of the meeting to the effect that the president stated that these offers represent an increase of $1,000,000 over the offers as referred to in the notice of this meeting.

X Q. 539. That reference in the minutes which you have just read identifies that statement with Exhibit 14?

A. Yes, sir.

X Q. 540. The offer set out in full in the minutes of June 20, 1923 was the second offer from the International Shoe Company, dated June 4, 1923?

A. It was.

X Q. 541. Both offers were considered or made known to the meeting?

A. Yes.

X Q. 542. Were both read and discussed by the stockholders present?

A. By "both offers" do you mean the offers of May 24 and the offers of June 4, or do you mean the two offers of June 4?

X Q. 543. I mean the two offers of May 24 and the two offers of June 4, 1923.

A. It was stated to the meeting that this offer was the same as the offer referred to in the notice of the meeting, with the exception of the increase in the purchase price.

X Q. 544. The increase of $1,000,000?

A. Yes, of $1,000,000.

X Q. 545. What is the name of the representative of the Bennett, Limited, who was present at the stockholders' meeting of June 20, 1923?

A. Pierre Bonin.

X Q. 546. And he was acquainted with both offers, and the offers of both dates May 24 and June 4, 1923?

A. Yes.

X Q. 547. I have forgotten whether you identified in your former examination the Mr. Prescott mentioned in a letter to you of June 16, 1923 to E. H. Ellison?

A. I did. Mr. C. H. Prescott to whom reference is made in that letter was at one time an officer of W. H. McElwain [fol. 481] Company; in fact its vice-president at the time

this letter [Exhibit 44] was written, but had been for a considerable time associated with E. H. Ellison, the signer of this letter, in the business of Mr. Ellison.

X Q. 548. And as shown by copy of your letter which you wrote to Mr. Eben H. Ellison dated June 12, 1923 you made no mention of the offers received from the International Shoe Company dated June 4, 1923?

A. That is true.

X Q. 549. So that Mr. Ellison's letter refers of course only to the offers dated May 24, 1923?

A. True.

X Q. 550. Do you know when Mr. Bonin first became acquainted with the offers from the International Shoe Company which were dated May 24, 1923?

A. No, I do not.

X Q. 551. Do you know when he first became advised of the subsequent offers dated June 4, 1923?

A. I do not. Of course his company received the notice of the meeting as I have already testified. But whether he had learned of these offers prior to that time or not, I personally don't know and was never told by anyone.

X Q. 552. Will you examine the document I hand you and tell me if you can identify it?

A. That is a copy of the notice of the special stockholders' meeting of June 20, 1923.

X Q. 553. Was the notice of which that was a copy sent to all the stockholders of record of the W. H. McElwain Company?

A. It was.

X Q. 554. And the document which you have just identified is a copy of the notice referred to in the minutes of the meeting of stockholders of June 20, 1923?

A. In the first paragraph of the minutes; yes.

X Q. 555. And it is also a copy of the notice which appeared in the minute book on page 334?

A. It is.

X Q. 556. Do you know why the offers from the International Shoe Company dated May 24, 1923, were subsequently both increased by the sum of $1,000,000?

A. No, I do not.

X Q. 557. The stockholders of W. H. McElwain Company, when they assembled in special meeting on June 20,

[fol. 482] 1923, had received no notice that the offers from International Shoe Company dated June 4, 1923 would be considered at that special meeting of stockholders?

A. They had received no formal notice. How far they had received informal notice from others than myself, I do not know.

X Q. 558. In considering the offers from the International Shoe Company dated June 4, 1923 at the special meeting on June 20, 1923, the stockholders had had no former prior notice that these offers would be up for consideration?

A. No formal notice. Whether they had received any verbal communication, I do not know. There was none by me.

Mr. Brindley: I believe that is all.

Redirect examination.

By Mr. Blake:

Q. 559. Was there any question raised by any of the stockholders of having received no notice of the offer which contained the $1,000,000 additional?

A. No objection was made by any stockholder at the meeting. The stockholders who were not at the meeting received notification afterward of what had taken place, including the amount for which the sale was voted, and they made no objection of any kind.

Q. 560. Mr. Warren, at the time of sending out this notice of the stockholders' meeting, and at the time you wrote these letters to Mr. Ellison and to Lee, Higginson & Company, did you know of the increase of $1,000,000 which had been put into the offers?

A. No.

Recross-examination.

By Mr. Brindley:

X Q. 561. Mr. Warren, have you examined recently the stock books of the W. H. McElwain Company?

A. I have just done so.

X Q. 562. Where did you examine them?

A. At one of the offices of the Old Colony Trust Company.

X Q. 563. The Old Colony Trust Company is the transfer agent of the company?

A. Yes.

X Q. 564. Will you tell me when certain stock and how much stock was transferred to Bennett, Limited?

A. The transfer books indicate that on June 19, 1923 the following stock was transferred to Bennett, Limited: First [fol. 483] preferred stock, 69,946 shares; common stock, 491 shares.

X Q. 565. Do the books show what stock was transferred to the Bennett, Limited?

A. They do. I did not take all that off because it comprised a very large number of certificates. Roughly, practically all of it was the stock of Stanley King and J. F. McElwain, joint tenants, and Frank C. Rand, special account. Any others were negligible in amount.

X Q. 566. On what orders or instructions were such transfers made?

A. On the instructions of Mr. King.

X Q. 567. When were such instructions given and how?

A. They were given by letter to the Old Colony Trust Company of June 15, 1923.

X Q. 568. Have you a copy of that letter?

A. I have [producing paper].

X Q. 569. This typewritten document which you have just handed me purporting to be a letter dated June 15, 1923, addressed to the Old Colony Trust Company, Boston, Massachusetts, over the name Stanley King, is a copy of the letter which Mr. King sent to the Old Colony Trust Company?

A. Yes.

X Q. 570. And on which the transfer was made?

A. Yes, sir.

Redirect examination.

By Mr. Blake:

Q. 571. Mr. Warren, what day of the week was June 19, 1923?

A. Tuesday.

Q. 572. What was June 18?

A. A Boston holiday.

Q. 573. What holiday is that?

A. Bunker Hill day.

Q. 574. Is that a legal holiday in the City of Boston?

A. It is not a legal holiday, but it is a bank and general holiday.

Q. 575. Then the Old Colony Trust Company was closed on June 18?

A. I have no doubt of it whatever.

Q. 576. What was the day which preceded that?

A. Sunday the 17th. Of course Bunker Hill day is really the 17th, but the 18th was celebrated last year.

Q. 577. June 16, 1923 was on Saturday?

A. It was.

Q. 578. And that is a half holiday in business circles?

A. It is.

Q. 579. That, then, is the explanation of why these trans-
[fol. 484] fers were not made until the 19th, although the stock was delivered for transfer on the 15th?

A. I have no doubt that that is the reason.

Mr. Blake: That is all.

Recross-examination.

By Mr. Brindley:

X Q. 580. As a matter of fact, the stock was delivered for transfer on the 12th?

A. Yes, the stock was delivered on the 12th?

Redirect examination.

By Mr. Blake:

Q. 581. But instructions for transfer were not given until the 15th?

A. No, they were not.

Mr. Blake: That is all.

Mr. Brindley: We now offer in evidence the document identified by the witness as a copy of the notice of the special meeting of the stockholders which was sent to the stockholders of the W. H. McElwain Company for the special

meeting of June 20, 1923, and ask that it be received in evidence and marked "Commission's Exhibit 15."

Examiner Blake: It will be received in evidence.

[Circular notice of special meeting of stockholders of W. H. McElwain Company June 20, 1923, marked "Commission's Exhibit 15."]

Mr. Brindley: I now offer in evidence as Commission's Exhibit 16 a copy of the letter identified by the witness, being copy of letter of June 15, 1923, written by Stanley King to the Old Colony Trust Company.

[Letter, June 15, 1923, Stanley King to Old Colony Trust Company, Boston, marked "Commission's Exhibit 16."]

Examiner Bennett: Is that stock still in the name of Bennett, Limited, on the books?

The Witness: Yes.

Examiner Bennett: That is all.

Mr. Blake: For the present the respondent has finished its proof.

Mr. Brindley: Then I request the examiner to adjourn the hearing to New York, at 10 o'clock on Friday morning, [fol. 485] at the office of the Federal Trade Commission in New York City, to resume the hearing at that time, and to take testimony on the part of the commission.

Mr. Blake: Do you mean that you have some additional proof to take to New York?

Mr. Brindley: Yes; I want to examine the officers and employees of the National Bank of Commerce in New York City.

[Informal discussion relative to date of further hearing in New York.]

Examiner Bennett: The hearing stands adjourned to 10 o'clock tomorrow, daylight saving time, Thursday, June 19, 1924, at room 911 Tilden Building, 105 West 40th Street, New York City, with the understanding that a continuance, if necessary, will then be granted until Friday morning.

[Hearing adjourned, to be resumed at 10 o'clock a. m. on Thursday, June 19, 1924, at New York City.]

New York, N. Y., June 19, 1924—1.30 p. m.

[Met pursuant to adjournment.]

EVIDENCE FOR THE FEDERAL TRADE COMMISSION

PAUL B. HOLMES was thereupon called as a witness and, having been duly sworn, testifies as follows:

Direct examination.

By Mr. Brindley:

Q. 1. Please state your name, residence and occupation.

A. Paul B. Holmes; residing at Quenten Apartments, Kew Gardens, Long Island, New York; employed by the National Bank of Commerce in New York, holding the position of auditor.

Q. 2. How long have you been employed by the National Bank of Commerce in New York?

A. Since February 1st, 1923.

Q. 3. And you of course were employed with that company in the month of June 1923, were you not?

A. Yes, sir.

Q. 4. Do you know Mr. Stanley King?

A. Yes, sir.

Q. 5. Do you know Mr. Pierre Bonin?

A. Yes, sir.

Q. 6. Do you recall a transaction with the National Bank of Commerce in New York about June 21st, 1923 or prior [fol. 486] to that date when a credit of $4,000,000 was secured by the International Shoe Company?

A. Yes, sir.

Q. 7. What did you have to do with that transaction?

A. Nothing other than as auditor of the bank to see that the proper records were made of the transaction.

Q. 8. Is that all you had to do with it?

A. Yes, sir.

Q. 9. Do you know when arrangements were made for that credit?

A. No, sir.

Q. 10. Do you know with whom they were made?

A. No, sir, I do not, except as the record now shows that it might have been made.

Q. 11. What does the record now show?

A. That Mr. Ward and Mr. Rovensky initialed a note of the International Shoe Company.

Q. 12. What is the date of that note?

A. June 21, 1923.

Q. 13. And what is the amount of the note?

A. $4,000,000.

Q. 14. And you say it was initialed by whom?

A. By Mr. Ward, president of the bank, and Mr. Rovensky, vice-president of the bank.

Q. 15. Do you know anything about the circumstances under which the loan was secured?

A. No, sir.

Q. 16. Or the purpose for which it was secured?

A. No, sir.

Q. 17. What kind and character of notes evidence that transaction?

A. The usual bank form of note used in loans similar to this, being made on a form which is in stock in the bank and used daily.

Q. 18. Did that kind of a note have any particular name?

A. Not named. It is known as a day loan.

Q. 19. What does that mean?

A. Loan that is made and paid off the same day.

Q. 20. Is it an actual loan?

A. Actual loan.

Q. 21. Is it not a credit on the books rather than a loan?

A. Actual loan.

Q. 22. Does it not recite in the note itself that it is an application for credit?

A. No, sir.

[fol. 487] Q. 23. Have you a copy of that note with you?

A. I have a photostat copy.

Q. 24. Have you any other copy?

A. A copy made of a photostat.

Q. 25. Let us see both copies.

A. Yes, sir. [Witness hands copies to counsel.]

Q. 26. Is this document I hand you a copy of the note in question?

A. No, sir.

Q. 27. What is it?

A. Copy of the photostat.

Q. 28. Not a copy of the note?

A. No, sir.

Q. 29. Was the note made on this particular form?

A. I believe it was.

Q. 30. Did you ever see the original note?

A. Yes, sir.

Q. 31. This character of note you say is what is called a one day loan?

A. A day loan.

Q. 32. And that means one that is made and paid all on the same day?

A. Yes, sir.

Q. 33. Was this loan of June 21st, 1923, made by the National Bank of Commerce in New York to the International Shoe Company of $4,000,000, dated on June 21st, 1923?

A. Yes, sir.

Q. 34. How was this paid?

A. By charging to the account of the International Shoe Company.

Q. 35. This particular note?

A. Yes, sir.

Q. 36. When the note was deposited with the bank on June 21st, 1923, that account of the International Shoe Company was credited with $4,000,000?

A. The proceeds of the note; yes, sir.

Q. 37. And before the close of business on the same day the note was paid by charging the account of the International Shoe Company with $4,000,000?

A. Yes, sir.

Q. 38. That closed the transaction as far as the note was concerned?

A. Yes, sir.

Q. 39. No interest was paid on it?

A. No, sir.

Q. 40. Do you know what the W. H. McElwain Company was on June 21st, 1923?

A. No, sir.

Q. 41. Did you ever have any business connection with W. H. McElwain & Company?

A. I have not.

[fol. 488] Q. 42. Can you identify that document which I hand you?

A. Yes, sir.

Q. 43. What is it?

A. It is a copy of a statement of account rendered W. H. McElwain & Company. It is a carbon copy of a statement of account rendered to W. H. McElwain & Company, Boston, Massachusetts, covering the month of June 1923.

Q. 44. Tell me what that statement of account shows regarding the business of W. H. McElwain & Company with the National Bank of Commerce in New York for the month of June 1923.

A. It shows that a deposit of $1,000 was made on June 16th, 1923; that a deposit was made on June 21st, 1923 of $4,063,125.89; a check was paid on June 21st, 1923 of the amount of $4,061,093.72 and that a balance, credit balance, existed on June 30th, 1923 of $3,032.17.

Q. 45. Do you know that that is a correct copy of that account of W. H. McElwain & Company with the National Bank of Commerce in New York for the month of June 1923?

A. Yes, sir.

Q. 46. Have you another copy of it in your files that you can give me?

A. Yes, sir.

Q. 47. What is that copy that you hold in your hand?

A. This is a copy made today—a statement of account—of a copy of the statement of account of W. H. McElwain & Company, Boston, Massachusetts, for the month of June 1923.

Q. 48. A copy of the statement which you just read into the record?

A. Yes, sir.

Q. 49. Is that document correct that you now hold in your hand?

A. Yes, sir.

Q. 50. A correct statement of the account of W. H. McElwain & Company for that month?

A. Yes, sir.

Mr. Brindley: I now offer in evidence this statement of account of W. H. McElwain & Company and ask that it be marked "Commission's Exhibit No. 17."

[The paper referred to was thereupon received in evidence and marked "Commission's Exhibit No. 17."]

Q. 51. Please examine the documents which I now hand you and tell me if you can identify them.

A. I can.

[fol. 489] Q. 52. What are they?

A. They are deposit slips covering a deposit in the National Bank of Commerce in New York on June 21, 1923, by the International Shoe Company of $4,061,093.72; a similar deposit slip on the same date for deposit made by W. H. McElwain & Company in the amount of $4,063,125.89; similar deposit slip by Bennett, Limited, in the sum of $4,061,093.72; deposit slip covering proceeds of the day loan made to the International Shoe Company in the amount of $4,000,000.

Q. 53. Who made out that deposit slip which you hold in your hand in favor of the International Shoe Company?

A. I do not know—this is the original.

Q. 54. That is the original?

A. Yes, sir; this is the original deposit slip.

Q. 55. And made out by the one who made the deposit?

A. Yes, sir.

Q. 56. You don't know who made it?

A. No, sir.

Q. 57. You did not see it made?

A. No, sir.

Q. 58. Are all these deposit slips dated the same date?

A. They are all dated the same date—June 21, 1923.

Q. 59. And they are all made out in the same handwriting?

A. I do not know.

Q. 60. They look alike, do they not?

A. International Shoe Company does—the two of the International Shoe Company appears to be the same handwriting.

Q. 61. How about June 21st written on each slip?

A. They have the same characters but I cannot testify as to the handwriting.

Q. 62. Look at the June 21st on this photostat copy of the $4,000,000 note and then compare it with the June 21st on the four deposit slips and tell me if they do not look alike.

A. They are all dated the same but I am not a handwriting expert.

Q. 63. What disposition was made of the day note of $4,000,000 of the International Shoe Company?

A. After payment it was returned through the mails to the treasurer of the International Shoe Company.

Q. 64. When?

A. June 21, 1923.

[fol. 490] Q. 65. The same day that it was made?

A. Yes, sir—same day it was dated.

Q. 66. What is the notation that is stamped on the bottom of each of the four deposit slips that you have identified?

A. The rubber stamp reading: "Duplicate ticket receipted June 21, 1903"; initialled by teller.

Q. 67. What is the initial?

A. The initial is "R."

Q. 68. Whom does that represent?

A. I recognize it as being the initial of our receiving teller.

Q. 69. What is his name?

A. Roger.

Q. 70. Do you know his initials?

A. I do not recall them.

Q. 71. Where is he today?

A. In the bank.

Q. 72. Could we secure him here?

A. Yes, sir.

Q. 73. The same gentleman initialled all four of the deposit slips?

A. Yes, sir.

Q. 74. Examine the document which I hand you and tell me if you can identify that document.

A. I can.

Q. 75. What is it?

A. It is a carbon copy of a statement of account rendered Bennett, Limited, Chamberly, Canton, Canada, for the month of June, 1923.

Q. 76. Is that a correct statement of the account?

A. It is; yes, sir.

Q. 77. What does that statement of account show with reference to the transactions of Bennett, Limited, with the National Bank of Commerce in New York for the twenty-first day of June, 1923?

A. It shows that on June 21st, 1923, Bennett, Limited, received a credit for a deposit in the amount of $4,061,-093.72, and that four checks were paid on that date in the amounts respectively: $600, $4,061,093.72, $190.71, $247.50.

Q. 78. Now, so far as the transaction involving $4,061,-093.72, what does that statement of account show?

A. That a deposit of that amount was made and that a check of that amount was paid.

Q. 79. All on June 21, 1923?

A. Yes, sir.

Q. 80. So far as that transaction is concerned, the account is evenly balanced on that date?

A. Those are the same amounts.

[fol. 491] Q. 81. They made a deposit and drew a check for the same amount?

A. Yes, sir.

Q. 82. The other items in addition to the $4,061,093.72 were in reference to other transactions on June 21st, 1923?

A. There were other transactions—I do not know what relation they may have had with this particular transaction.

Q. 83. Or whether they had any relation?

A. That is correct.

Q. 84. There were other transactions in addition to the $4,000,000 transaction that you mention on that same day?

A. Yes, sir.

Q. 85. What is the notation on the four deposit slips identified which appears in the column just at the left of the column containing the amount of the deposit—appearing opposite the amount of deposit?

A. Notation on deposit slip of Bennett, Limited, is "N. Y.", indicating a check drawn on a New York bank. A similar notation on the deposit slip of W. H. McElwain & Company indicating the same—drawn on a New York Bank. Similar notation on the deposit slip of International Shoe Company covering deposit of $4,061,093.72 indicating a check drawn on a New York bank; and a notation on the deposit slip of the International Shoe Company $4,000,000, the notation being "A," indicating day loan.

Q. 86. Are those notations you have just recited the usual notations used in the National Bank of Commerce in New York for the designations you have described?

A. Yes, sir.

Q. 87. The notation "N. Y." designating in all instances a check drawn on a New York bank?

A. Yes, sir.

Q. 88. And the notation "A" indicating likewise a day loan?

A. Yes, sir.

Q. 89. Can you take those deposit slips which you hold in your hand, which you just identified, and trace those items through the statements of account that you have just mentioned of the International Shoe Company, W. H. McElwain & Company and Bennett, Limited?

A. Yes, sir.

Q. 90. Please do so.

A. Deposit slip International Shoe Company dated June 21st, 1923, for $4,000,000 is represented on the statement by credit in the amount of $4,000,000 under date of June [fol. 492] 21st, 1923, statement of the account of the International Shoe Company. Deposit slip International Shoe Company in the amount of $4,061,093.72 is represented in the statement of the International Shoe Company by a credit on June 21st, 1923, of $4,061,093.72. Deposit slip of Bennett, Limited, in the amount of $4,061,093.72 is represented in the statement of Bennett, Limited, by a credit in the amount of $4,061,093.72 under date of June 21st, 1923. Deposit slip of McElwain & Company of $4,063,125.89 is represented on the statement W. H. McElwain & Company by a credit of $4,063,125.89 under date of June 21st, 1923.

Mr. Brindley: I now offer in evidence as "Commission's Exhibit 18" a photostat copy of a note dated June 21, 1923, given to the National Bank of Commerce in New York by the International Shoe Company by F. C. Rand, president, and the name F. A. Suderholt, treasurer, also appearing thereon, for the sum $4,000,000; this being the day note described by the witness. This is offered in evidence with the understanding that it will be withdrawn and returned to the custody of the witness and a photostat copy of this note to be supplied or substituted in the record for this exhibit.

Examiner Bennett: Received under that condition.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit No. 18.")

Mr. Brindley: A photostat copy of the original note is to be made by the respondent and forwarded to the Federal Trade Commission at Washington, D. C., and the photostat copy so furnished by the respondent will be placed in the record as a substitute for this particular exhibit—Commission's Exhibit No. 18.

Cross-examination.

By Mr. Blake:

X Q. 91. Mr. Holmes, you say that these day loan notes are frequently used in the business of your bank?

A. They are; yes, sir.

By Examiner Bennett:

Q. 92. Did you say Mr. Ward was your president?

A. Yes, sir.

Q. 93. What is your routine in the matter of loans in your bank?

A. It requires two senior officers to initial each and every [fol. 493] loan made in the granting of credit to any customer of the bank. In this particular case the two senior officers who initialled this loan to be made—and pass on the credit of the borrower—were Mr. Ward president and Mr. Rovensky vice-president, both being senior officers of the bank.

Q. 94. And that is ordinarily done on the day the loan is made, or at some previous time?

A. It might be done previously or on the day of the loan.

Q. 95. In the routine of your bank does the same teller receive deposits and also pay checks?

A. No, sir.

(Witness excused.)

Edwin C. Rodger was thereupon called as a witness and, being duly sworn, testifies as follows:

Direct examination.

By Mr. Brindley:

Q. 1. Please state your name, residence and occupation.

A. Edwin C. Rodger; Piermont, New York; occupation, bank clerk.

Q. 2. With what bank are you connected?

A. National Bank of Commerce in New York.

Q. 3. How long have you been connected with that bank?

A. About nineteen or twenty years—I think it is nineteen years.

Q. 4. You were connected with the National Bank of Commerce of New York in the month of June, 1923, were you?

A. Yes, sir, I was.

Q. 5. Do you remember any transaction you had that day with the International Shoe Company, W. H. McElwain & Company and Bennett, Limited?

A. I cannot say offhand. I remember—I probably could recall them by seeing some of the tickets.

Q. 6. Examine the documents I hand you and see if you can identify them.

A. Yes, sir.

Q. 7. Can you identify those dcouments that you hold in your hand?

A. Yes, sir, I can.

Q. 8. What are they—tell me what they are?

A. International Shoe Company is what we call a clearance loan, credited to the account of the International Shoe Company.

[fol. 494] Q. 9. For how much?

A. $4,000,000.

Q. 10. Go ahead.

A. These others I cannot say just what they are unless I had the other records. They are deposits. These are deposits of $4,061,093.72 and is to the account of the International Shoe Company.

Q. 11. What date?

A. June 21, 1923.

Q. 12. Proceed with the others.

A. W. H. McElwain & Company, June 21, 1923, a deposit of $4,063,125.89. Bennett, Limited, June 21, 1923, a deposit of $4,061,993.72.

Q. 13. Those four slips you have just described are the original deposit slips received by the National Bank of Commerce in New York?

A. Yes, sir, those are the original deposit slips.

Q. 14. Each of them passed through your hands?

A. Yes, sir.

Q. 15. How do you know?

A. There is my stamp and my initial on them.

Q. 16. On each one of the slips?

A. Yes, sir.

Q. 17. That is your initial at the bottom?

A. Yes, sir.

Q. 18. Which you recognize?

A. Yes, sir.

Q. 19. From whom did you receive those deposits?

A. I am afraid I cannot tell you offhand on that. I do not think there is anything on there to identify just where they came from. They were presented through the window to me. The duplicate slip—that identifies them as being a duplicate slip presented to me.

Q. 20. Do you know who handed them to you?

A. No, sir; I cannot tell you that.

Q. 21. How long have you been receiving deposits for the National Bank of Commerce in New York?

A. Since the summer of 1914.

Q. 22. Of course you are very familiar with their method of receiving deposits and giving receipts therefor?

A. Yes, sir.

Q. 23. Are you familiar with handwriting?

A. Familiar with what?

Q. 24. Familiar with handwriting?

A. To a certain extent—I would not say that I am an expert.

Q. 25. Have you had experience in examining handwriting?

A. Yes, sir.

[fol. 495] Q. 26. Examine those four slips just identified by you and tell me if they all made out in the same handwriting.

A. Not being an expert—I would say that they were.

Q. 27. That is your best judgment?

A. Yes, sir; that they are the same handwriting.

Q. 28. Observe opposite the amount of the deposit—in the column to the left—a certain notation; do you observe that on those slips?

A. It looks like "N. Y."

Q. 29. Did you make those notations yourself?

A. No, sir. I did not make any of those notations—I made that notation.

Q. 30. What is that notation you are talking about?
A. That stands for "A," clearance loan.
Q. 31. That is on what deposit slip?
A. International Shoe Company, $4,000,000 even.
Q. 32. On the deposit slip dated June 21, 1923?
A. Yes, sir.
Q. 33. You say that you made the notation "A"?
A. Yes, sir.
Q. 34. What does that mean?
A. Clearance loan.
Q. 35. What do you mean by that?
A. A day loan—paid off the same day.
Q. 36. Does a clearance loan in bank circles mean the same thing?
A. Yes, sir, it is all the same as far as I know.
Q. 37. A loan made one day and paid off the same day?
A. Yes, sir.
Q. 38. Do you know Mr. Stanley King?
A. I cannot say that I do; I do not recognize the name.
Q. 39. Do you know Mr. Clifford T. Warren in Boston?
A. I do not think so.
Q. 40. Do you know Pierre Bonin?
A. No, sir.
Q. 41. Examine that document which I hand you and tell me if you can identify that.
A. I can identify this as the original of this deposit—International Shoe Company, June 21, 1923, of $4,000,000.
Q. 42. The $4,000,000 deposit of the International Shoe Company of June 21, 1923, that you received and opposite which you marked "A." From what source did the securi-
[fol. 496] ties come covering that note?
A. Securities? I do not know that it was secured. It is approved by two of our officials.
Q. 43. And the proceeds of this note was credited to the account of the International Shoe Company?
A. Yes, sir.
Q. 44. What is the note? Describe it so the reporter can take it down.
A. This is known as an application or clearance loan,—a loan that is made to our customer in the morning and paid off in the afternoon.
Q. 45. That particular note of the International Shoe Company was dated what day and for what amount?

A. Dated June 21, 1923, for $4,000,000. A clearance loan, International Shoe Company, and was paid off that same date.

Q. 46. Do you identify that as a note used in your bank by your customers frequently?

A. Yes, sir, that is used every day by some of our customers.

Q. 47. Usually when they secure a loan in the morning and pay it off before the close of the day's business?

A. Yes, sir, some time during the course of the day.

Q. 48. Is it a note that is frequently used when it is not intended that any money should pass but merely a bookkeeping transaction?

A. I could not answer that.

Q. 49. Is it so used?

A. I do not believe I can answer that.

Q. 50. What is that document which you have before you that you are looking at right now?

A. What is it?

Q. 51. Yes.

A. A clearance loan.

Q. 52. It is a $4,000,000 note which you have just described?

A. Yes, sir.

Q. 53. A photostat copy of it?

A. Yes, sir, a photostat copy of the original note that we had that day.

Q. 54. How is the date on that note inserted?

A. In pen and ink.

Q. 55. What is the date?

A. June 21, 1923.

Q. 56. Is that the same date on the four deposit slips you have examined?

A. Yes, the four deposit slips are the same date,—June 21, 1923.

Q. 57. Examine the date on the day loan for $4,000,000 [fol. 497] and date that is written on the four deposit slips and tell me if in your judgment they are in the same handwriting.

A. To the best of my judgment, they are all in the same handwriting.

Q. 58. It is your best judgment that the same person filled in the date on that $4,000,000 day loan and also in the four deposit slips?

A. It looks the same to me. I should say it is the same writing.

Cross-examination.

By Mr. Blake:

X Q. 59. When your customer brings in one of those day-loan notes does the bank then immediately place to the credit of the customer the amount of that note?

A. The amount of the note is immediately placed to the credit of our customer.

X Q. 60. And it is there subject to the order of the customer for disbursement or paying out as he sees fit?

A. So far as I know, it is; yes, sir.

X Q. 61. And you say the note is paid before the end of the day?

A. Yes, sir.

X Q. 62. And the note which you have before you—the photostatic copy—shows that the International Shoe Company paid off the note before the end of that day?

A. Yes, sir.

By Examiner Bennett:

Q. 63. Who in your organization received the payment?

A. Received the payment of this note?

Q. 64. Yes.

A. It was paid through my own department.

Q. 65. You received payment?

A. Yes, sir.

Q. 66. That is what the stamp shows?

A. Yes, sir; paid off that date.

Q. 67. Do you know how it was paid?

A. I cannot say offhand how it was paid.

Q. 68. You do not remember that?

A. No; I don't remember how it was paid.

Q. 69. Is there another deposit there by the International Shoe Company?

A. Yes, sir.

Q. 70. Amounting to $4,000,000?

A. Yes, sir, amounting to $4,061,093.72.

Q. 71. Will you go into that further and tell us how this [fol. 498] loan was paid to you? You gave your customer credit for that loan on your books, I believe, did you not?

A. Yes, sir.

Q. 72. And then what further have you to do with it?

A. We give the customer credit for the $4,000,000 day loan and then if he—I will say if he should certify to use up the $4,000,000, it would have to be covered before the day was over.

Q. 73. Do you have to look after that?

A. Yes, sir; I have to see whatever his certifications have been—whether they have been used against the account—it has to be covered before the day is over.

Q. 74. And you look after that by consulting the account of the customer before the close of banking hours?

A. Yes, sir.

Q. 75. To see what has taken place during the day and to see that that loan is covered?

A. See that there is enough credit coming in from some source to cover the note.

Q. 76. Then, after you have determined that fact, you take that note and stamp it paid?

A. Exactly so—stamp it paid and return it to our customer.

Q. 77. And the credits are balanced to that amount—just what do you do to show that transaction on your part?

A. For instance I will tell you. I keep a record down in my department, and then I get a record from the certification man as to the amount which has been used against the account and before the day is over—before I pay this off—I have to see that they have enough credit in from some source to cover the note.

Q. 78. And the accounting department takes care of the rest—you simply see that it is covered?

A. Yes, sir.

Q. 79. So far as the record of the transaction is concerned, that is up to the accounting department?

A. Yes, sir.

By Mr. Brindley:

Q. 80. Do I understand you to say that this stamp on the back of the note, "Paid June 21, 1923," was put on there by you or your department?

A. That was put there by me.

Mr. Brindley: I now offer in evidence four deposit slips identified by this witness and the preceding witness, Mr. Holmes.

The first slip I offer in evidence is made out in the name of the International Shoe Company for $4,000,000.

[fol. 499] [The paper referred to was thereupon received in evidence and marked "Commission's Exhibit No. 19."]

Mr. Brindley: I now offer in evidence deposit slip in the name of the International Shoe Company for $4,061,093.72.

[The paper referred to was thereupon received in evidence and marked "Commission's Exhibit No. 20."]

Mr. Brindley: I now offer in evidence deposit slip in the name of W. H. McElwain & Company for $4,063,125.89.

[The paper referred to was thereupon received in evidence and marked "Commission's Exhibit No. 21."]

Mr. Brindley: I now offer in evidence deposit slip of Bennett, Limited, for $4,061,093.72, all dated June 21, 1923.

[The paper referred to was thereupon received in evidence and marked "Commission's Exhibit No. 22."]

Mr. Brindley: I have offered these in evidence as Commission's Exhibits 19, 20, 21 and 22 with the understanding that photostatic copies thereof will be made by the Federal Trade Commission and inserted in the record in lieu of these original slips and the slips returned to the National Bank of Commerce in New York.

I believe, your Honor, we will close the case of the commission.

Mr. Blake: We also close.

Examiner Bennett: The attorney for the commission will have thirty days after service upon him of the examiner's report on the facts in which to file with the commission and serve upon the attorney for the respondent, under the

rules of the commission, his brief, if he wishes to serve one, and the attorney for the respondent will have forty days after the service upon him of the examiner's report upon the facts, to serve a copy of his brief, if he prepares any, upon the attorney of the commission, and file with the commission under the rules of the commission.

Mr. Blake: Those are the briefs to be filed with the commission?

Examiner Bennett: Yes.

Mr. Blake: I understand we can file the exceptions to the report of the examiner?

[fol. 500] Examiner Bennett: Yes; within ten days after you receive the report.

Mr. Blake: And we have forty days in which to file our brief with the commission?

Examiner Bennett: Yes; and the exceptions will be incorporated in the brief when the brief is finally filed.

The taking of testimony by the examiner in this proceeding is now closed without day.

[Case closed.]

[Stamped:] Federal Trade Commission. Received Sep. 23, 1925, Secretary's Office. Delivered in person 9/23/25. Otis B. Johnson, Secretary.

BEFORE FEDERAL TRADE COMMISSION

MOTION OF RESPONDENT TO RECONSIDER AND SET ASIDE ORDER

Comes now the International Shoe Company, respondent herein, and moves the commission to reconsider, set aside and revoke its order entered July 29, 1925, against respondent in the above designated proceeding, for the reasons following:

1st. The findings of fact by a majority of the commission with reference to the charge that the effect of said stock acquisition tended to create a monopoly in the shoe business in respondent are inconsistent and contradictory, so that respondent cannot know what is meant thereby in this: Paragraph Twenty concludes with this finding: "The

effect of such acquisition by respondent of such stock or share capital tended to create in respondent a monopoly in commerce in the shoe business." On the other hand, two of the three commissioners, composing the majority, to wit, Commissioners Nugent and Thompson, dissent to "the omission from the foregoing findings of the following words as Subparagraph (d) of Paragraph Twenty-three thereof, viz: (d) 'To tend to create in International Shoe Company a monopoly in commerce of the shoe business.' "

2d. It is apparent from the very face of the record that [fol. 501] in finding that the effect of said stock acquisition by respondent was to substantially lessen competition and restrain trade, the commission has (a) inadvertently disregarded the definition of insolvency as declared by the laws of Massachusetts and has erroneously adopted the meaning of insolvency as defined by the National Bankruptcy Act of 1898, and (b) has confused the fact of insolvency with a formal adjudication thereof.

Wherefore respondent respectfully requests that the commission reconsider the order heretofore made and that it set the same aside, and in aid of its request it hereby submits to the commission the following:

UNITED STATES OF AMERICA:

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the sixth day of November, A. D. 1925.

Present: Vernon W. Van Fleet, Chairman; John F. Nugent, Charles W. Hunt, Huston Thompson, William E. Humphrey, Commissioners.

Docket 1023

In the Matter of INTERNATIONAL SHOE COMPANY

Order

This matter being before the commission was considered on the following papers which were before it: (a) a memo-

randum of September 29, 1925 from the chief counsel transmitting a motion filed September 23, 1925 by counsel for the respondent to reconsider and set aside the order of the commission dated July 29, 1925; (b) the motion of respondent to reconsider and set aside the said order; and (c) a memorandum of July 29, 1925 from the trial attorney of this case; and the same were duly considered and understood by the commission.

It is ordered, that the commission reconsider its action of July 15, 1925 by which the findings and order were approved and issued herein.

It is further ordered, that the words "the effect of such [fol. 502] acquisition by respondent of such stock or share capital tended to create in the respondent a monopoly in commerce in the shoe business" be stricken from Paragraph Twenty of the proposed findings as to the facts, Commissioners Nugent and Thompson dissenting.

It is further ordered, that the proposed findings as to the facts as amended together with the proposed order to cease and desist and divest, etc., be and the same are hereby, approved and ordered isued as of this date and be served.

By the Commission, Commissioners Hunt and Humphrey dissenting.

Otis B. Johnson, Secretary.

ARB:k. 11, 25, '25.

BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

FINDINGS AS TO THE FACTS AND CONCLUSION—NOV. 25, 1925

Pursuant to the provisions of an Act of Congress approved October 15, 1924, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (The Clayton Act) the Federal Trade Commission duly issued and served a complaint on International Shoe Company, a corporation hereinafter called respondent, charging that International Shoe Company is and has been violating the provisions of said Act of Congress and especially Section 7 thereof.

Thereupon the respondent entered its appearance and filed its answer to the complaint, and formal hearings were had thereon before an examiner of the commission theretofore duly appointed, and testimony, documentary evi- [fol. 503] dence and exhibits were offered and received, and duly recorded and filed in the office of the commission; thereafter the proceeding regularly came on for hearing before the Federal Trade Commission on such complaint and answer, and on the testimony, evidence and exhibits on file, and on the briefs and arguments of counsel, and the Federal Trade Commission duly considered the same, and now makes this report in writing and states its findings as to the facts as follows:

Findings as to the Facts

Paragraph One. The respondent, International Shoe Company, is a corporation under the laws of Delaware, with its principal office and place of business in the City of St. Louis, Missouri. It was originally incorporated under the laws of Missouri and was a consolidation of two corporations engaged in the shoe business at St. Louis, Missouri, viz: Roberts, Johnson and Rand, and Peters Shoe Company. It later purchased the Friedman-Shelby Company of St. Louis, and was reincorporated in 1921 under the laws of Delaware. It owns and operates tanneries for leather in the States of Illinois, Pennsylvania and North Carolina, and it owns and operates thirty-two or more shoe factories in the States of Missouri, Illinois and Kentucky, with a daily capacity of more than seventy thousand pairs of shoes, and owned and operated such tanneries and factories in 1921 and prior thereto. It now operates and claims to own the leather tanneries and shoe factories in the States of New Hampshire and Massachusetts formerly owned by W. H. McElwain Company. It owns and operates seven sales houses or branches in the cities of Boston, Massachusetts, New York, New York, and St. Louis, Missouri, and it manufactures and sells in commerce a large general line of leather shoes for men, women, boys, girls and infants.

Paragraph Two. For many years past, and during 1921, the various types and styles of shoes manufactured by respondent were sold through its sales houses or branches

throughout the United States generally, to purchasers in substantially all of the States of the United States. Such [fol. 504] shoes were shipped and transported from the places where respectively manufactured or sold by respondent to purchasers into other States of the United States and the District of Columbia, and respondent is and for many years has been engaged in commerce in competition with others, within the meaning of said Act of Congress.

Paragraph Three. In 1921, and prior thereto, the trade territory of the respondent was practically all of the United States. The shoes manufactured by it were sold largely to retail dealers in small cities and towns in the various States outside New England. Respondent made some sales of its shoes in New England, and also to wholesale and retail dealers in some of the larger cities throughout the United States. Prior to the acquisition by the respondent of the stock or share capital of the W. H. McElwain Company, all the sales houses or branches of the respondent were located in St. Louis, Missouri.

Paragraph Four. W. H. McElwain Company is a corporation under the laws of Massachusetts. Its principal office and place of business was at Boston, Massachusetts. In 1921, and for many years prior thereto, W. H. McElwain Company owned and operated tanneries for leather at Manchester and Merrimac, New Hampshire, and shoe factories at Manchester, Nassau, Newport, Claremont and Keene, New Hampshire, and was engaged in manufacturing and selling leather shoes for men, boys and misses. Its shoe factories had a daily capacity of about forty thousand pairs of shoes. It owned, in whole or in part, branches or distributing houses in Boston, Massachusetts; New York, New York; Columbus, Ohio; Chicago, Illinois; Kansas City, Missouri, and San Francisco, California; and developed a sound and successful business, and for many years it was regarded as the most efficiently managed concern in the world. It produced, among other shoes, dress shoes for men and boys. Dress shoes mean shoes worn generally as distinguished from work shoes. The shoes manufactured by W. H. McElwain Company were sold by it direct from its factories to jobbers and wholesalers and to large retailers in cities among the several States and to retail dealers throughout the United States generally. It also sold its

[fol. 505] shoes direct from its branches or distributing houses to retail dealers among the several States adjacent to such branches or distributing houses. Some of its branch houses sold only the shoes manufactured by W. H. Elwain Company, while others of its branch houses, in addition to McElwain shoes, sold a general line of shoes purchased from other manufacturers. For the year ending May 31, 1921 the men's and boys' shoes manufactured by the W. H. McElwain Company were sold to purchasers in at least thirty-five States of the United States and the District of Columbia. The larger part of its product was sold in the cities, but it also sold its shoes direct to retailers in small cities and towns in at least thirty-five States of the United States. In 1920 it also made more dress welt shoes for men and boys than any other manufacturer in the world, and was the largest manufacturer of shoes in the New England States.

Paragraph Five. The shoes produced by W. H. McElwain Company in 1921 and for some time prior thereto were sold to retail dealers at about six to nine dollars per pair. At the same time the International Shoe Company produced a line of men's dress shoes known as the "Patriot" brand, and of that brand ten styles of low shoes and twenty-two styles of high shoes were similar in style, comparable in price, and equal or superior in quality to the men's high and low dress shoes produced by the W. H. McElwain Company. The "Patriot" shoes manufactured and sold by respondent were sold to retailers at about the same price per pair as the shoes manufactured and sold by W. H. McElwain Company. Both companies made and sold medium priced dress shoes and sold such shoes to retail dealers in the same States, and in many of the same cities and towns, and in some instances to the same dealers. On and prior to May 11, 1921 both companies were engaged in manufacturing and selling leather dress shoes in commerce among the several States and the District of Columbia, in competition with each other, and with others similarly engaged. The competition in commerce between the two companies was substantial.

Paragraph Six. Respondent is the largest manufacturer [fol. 506] of leather shoes in the United States. In its catalogue for the spring and summer of 1921 respondent

listed and described sixty-nine types or styles of low shoes and sixty-two types or styles of high shoes for women; thirty-nine types or styles of leather low shoes and seventy-six types or styles of leather high shoes for men; thirty-two styles or types of leather low shoes, and forty-five styles or types of leather high shoes for children; thirty-two styles or types of leather high shoes for boys; thirty-seven styles or types of leather shoes for infants, and sixty-one styles or types of leather high work shoes for men. In addition, respondent's catalogue listed and described about fifty varieties of cloth or canvas shoes, and sixteen varieties of rubber-soled shoes.

Paragraph Seven. For many years prior to May 11, 1921, extending probably as far back as 1898, W. H. McElwain Company was engaged in the manufacture of leather shoes for men and boys, and in the sale and distribution of the same among the several States of the United States. It was among the larger manufacturers of such shoes in the United States and it was the largest manufacturer in the United States of leather dress shoes for men and boys. It manufactured and sold a larger line of such shoes than the respondent.

Paragraph Eight. For the fiscal year ending May 31, 1921, the shoes manufactured by W. H. McElwain Company were sold and delivered by it direct from its factories to retail dealers in at least thirty-five States of the United States and the District of Columbia. Such shoes were sold and delivered by it to retailers in the States of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Ohio, Indiana, Illinois, Michigan, Wisconsin, West Virginia, Kentucky, Tennessee, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Iowa, Oklahoma, Texas, Minnesota, Utah, Colorado, Washington, Oregon, California, District of Columbia, and also in New Foundland and the Hawaiian Islands. The sales in some of these States were small. During the same period W. H. McElwain Company also sold and shipped its shoes to jobbers and wholesale dealers among the several States [fol. 507] and to its branch houses or distributing agencies in the cities of Boston New York, Columbus, Chicago and San Francisco. During the same time respondent sold its

shoes, including men's dress shoes, to about 78,242 retail dealers in the States of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, Virginia, North Carolina, Georgia, Florida, Kentucky, Tennessee, Mississippi, Alabama, Ohio, Indiana, Michigan Wisconsin, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Kansas, Missouri, Arkansas, Oklahoma, Texas, Louisiana, Montana, Wyoming, Idaho, Utah, Arizona, Colorado, New Mexico, Nevada, Washington, Oregon, California and the District of Columbia.

Paragraph Nine. In the summer and fall of the year 1920 there was a slump in prices, a cancellation of orders and reduced buying, and that situation affected the shoe business as well as other lines of commerce in the United States. W. H. McElwain Company had contracted for a year's supply of hides in India, and had other commitments and large stocks of finished shoes and owed large sums of money at the banks. Its officers and directors became apprehensive of its financial condition. It was, however, not insolvent, and it did not fail. The respondent had been remarkably successful and was unhurt by the business depression of 1920. It was in a strong, healthy position, and was vastly oversold on its products, so much so that it was a matter of grave concern to its management. The situation was concretely expressed by Jackson Johnson, the chairman of the International Shoe Company board, in the following testimony:

"Might I say, rather than just giving you the sum total, that this sheet indicates that the company had for that period (i. e., January to May, 1921) orders to the extent of $37,265,000, out of which it shipped $25,875,000, and due to this inability there were $11,395,000 either cancelled by us or the customers. In other words we shipped only about two-thirds of the goods we had orders for during that period just preceding the purchase of the W. H. McElwain Company."

[fol. 508] Paragraph Ten. On a Saturday night in March 1921 J. F. McElwain, the president of W. H. McElwain Company, appeared in St. Louis, Missouri, and, through W. H. Moulton, a vice-president of respondent, arranged

to see and talk the next day with Jackson Johnson at his home. Jackson Johnson was chairman of the International Shoe Company board. McElwain approached Johnson on that Sunday morning with the suggestion of a consolidation of large shoe manufacturers to include at least three other large manufacturers of shoes, and inquired if Johnson would be interested in heading such an organization. Johnson declined, stating that he would not be interested. About ten days later, on April 8, 1921, McElwain returned to St. Louis accompanied by Stanley King, a vice-president of W. H. McElwain Company, and again conferred with Johnson. The big combination of shoe manufacturers was then only casually mentioned, and McElwain took up the question of the International Shoe Company taking over W. H. McElwain Company. McElwain submitted to Johnson balance sheets and trial balances, and went fully into the conditions confronting W. H. McElwain Company. Johnson took no definite stand on the matter. Frank C. Rand, president of the International Shoe Company, was not in St. Louis at that time. It was agreed that when Rand returned to St. Louis he and Johnson would go to Boston, Massachusetts, to look over the situation. McElwain agreed to furnish additional figures in regard to W. H. McElwain Company, and Johnson agreed to furnish figures regarding the International Shoe Company and its business. The next day, April 9, 1921, Johnson wrote a letter to McElwain which appears in the record as Commission's Exhibit 23, and McElwain replied in a letter which appears in the record as Respondent's Exhibit 24.

Paragraph Eleven. In compliance with the agreement, Johnson and Rand visited Boston, Massachusetts, accompanied by Moulton, a vice-president of the International Shoe Company, who had been employed by W. H. McElwain Company for many years prior to his employment by respondent. Three days, April 25, 26 and 27, 1921, were spent by these parties and officers of the W. H. McElwain [fol. 509] Company in an inspection of the physical properties of W. H. McElwain Company and in an investigation of its business, and in discussing the proposed trade. Johnson and Rand declined to consider any proposition without an appraisal, inventory and audit of W. H. McElwain Company. Nothing except general principles in relation to the

trade were agreed upon, and Johnson and Rand left Boston without any definite proposition. McElwain and King accompanied Johnson and Rand to New York, and the conferences were continued that night at a hotel. Johnson stated during the conference at the hotel that he would recommend 87½ per cent for the first preferred stock of W. H. McElwain Company, subject to proper inventory, appraisal and evidence of assets. But Johnson said that the respondent would not be interested on any terms unless W. H. McElwain Company first took a physical inventory of its assets, and submitted an audited balance sheet. J. F. McElwain agreed to take an inventory and submit an audited balance sheet of W. H. McElwain Company.

Paragraph Twelve. The inventory was taken, McElwain and King again went to St. Louis, and the next conference occurred on May 8, 1921 at Rand's house betwen McElwain and King and several officers of respondent. A balance sheet and the inventory as of April 30, 1921 were presented and discussed. After some discussion and a failure to agree, it was suggested that Rand and King withdraw from the conference and work out some solution of the problem, and they did so. King offered to sell the assets of W. H. McElwain Company to International Shoe Company, but Rand declined to buy the assets at any price. W. H. McElwain Company had three classes of stock outstanding, viz: first preferred, second preferred, and common. International Shoe Company had two classes of stock outstanding, viz: preferred and common. Rand and King worked out figures and an agreement for the three classes of stock of W. H. McElwain Company, which would express itself on the basis of the net assets of W. H. McElwain Company as shown by the inventory, and these figures were manipulated so that the prices for the three classes of stock in the [fol. 510] agregate amounted in round numbers to the value of the company indicated by the inventory. The terms worked out by Rand and King, with some slight modification suggested by Johnson, were agreed to and subsequently embodied in a written agreement on May 11, 1921 between representatives of the two companies and the bankers who were largely interested in the first preferred stock of W. H. McElwain Company. That contract appears in the record as Respondent's Exhibit 4.

Paragraph Thirteen. The consolidated balance sheet of W. H. McElwain Company as of April 30, 1921 appears in the record as Respondent's Exhibit 1. The assets of W. H. McElwain Company on that date amounted to $27,100,437, and the debts consisting of notes and accounts amounted to $17,177,349.25, leaving a net worth of $9,923,087.75.

Paragraph Fourteen. The contract of May 11 provided that all the three classes of stock of W. H. McElwain Company should be acquired by the respondent by an exchange of its stock on the terms therein named. McElwain and King agreed to sell all the outstanding stock of W. H. McElwain Company, although their ownership of stock was of second preferred and common. As a basis for exchange International Shoe Company preferred stock $100 par was valued at $109, and International Shoe Company common stock of no par was valued at $30. W. H. McElwain Company first preferred stock $100 par was valued at $82.50; second preferred $50 par was valued at $37.50, and the common stock $50 par at $25. The stockholders of W. H. McElwain Company were given the option of taking International Shoe Company stock or cash. For the three classes of W. H. McElwain stock the respondent gave in stock and cash the sum of $9,464,837.50.

Paragraph Fifteen. On May 12, 1921 the directors of the International Shoe Company unanimously adopted a preamble and resolution which recites that the stockholders of the W. H. McElwain Company had submitted to the board the result of a detailed inventory and financial statement of the W. H. McElwain Company as of May 6, 1921, and had agreed to sell the entire outstanding capital stock of W. H. McElwain Company for the equivalent of $9,464,-[fol. 511] 832.50 on the basis therein named. The preamble recites that the officers of respondent after a careful analysis of such inventory and representation concluded that said sum represents the fair and reasonable basis of the sound values of the net assets of W. H. McElwain Company; that the assets of W. H. McElwain Company are reasonably worth the prices therein stated; that the association with W. H. McElwain Company resulting from the merger of the two companies was desirable to properly meet the demands of the growing business of the International Shoe Com-

pany. That preamble and resolution appears in the record as Respondent's Exhibit 2.

Paragraph Sixteen. The contract of May 11, 1921 (Respondent's Exhibit No. 4) provided in paragraph ten thereof that unless the audit then being made by Chase & Co., public accountants of Boston, Massachusetts, confirmed the balance sheet of April 30, 1921 in all essential particulars, International Shoe Company might withdraw from the agreement. On May 14, 1921 International Shoe Company accepted the audit and confirmed the agreement by wire and letter, and such confirmation appears in the record as Respondent's Exhibits 8 and 9.

Paragraph Seventeen. In exchange for the three classes of stock of W. H. McElwain Company, the respondent issued 52,670 shares of its preferred stock at $109 a share, and 113,028 shares of its common stock at $30 a share, and also paid $181,729.20 in cash. For the three classes of stock of the W. H. McElwain Company, the respondent made an expenditure of stock and cash amounting to $9,463,599.20, and by that transaction respondent acquired directly all the three classes of stock or share capital of W. H. McElwain Company except about 50 shares of first preferred stock and 35 shares of common stock.

Paragraph Eighteen. Almost immediately after the respondent accepted the audit of Chase & Co., the W. H. McElwain Company and respondent inserted a page advertisement in the issue of the New York World of May 20, 1921. The heading of that advertisement is: "Announcing the Creation of the Largest Shoe Company in the World." That advertisement appears in the record as Commission's [fol. 512] Exhibit 2, and among the statements therein are the following:

"The International Shoe Company of St. Louis and the W. H. McElwain Company of Boston have merged.

"It brings together a combined manufacturing capacity larger than that of any other maker of shoes in the United States or Abroad.

"In 1920 the International Shoe Company made more pairs of men's, women's and children's shoes than any other manufacturer in the world—bearing the widely known marks of their distributing companies: Roberts, Johnson

and Rand, Peters Shoe Company, Friedman-Shelby Company.

"In the same year the W. H. McElwain Company made more pairs of men's and boys' street and dress welt shoes than any other manufacturer in the world. McElwain shoes are widely and favoraby known under the guarantee of their trade mark—McElwain.

"The combined volume of these two companies in 1920 was $128,000,000. So this merger creates the largest agency for the manufacture and distribution of shoes in the World.

"Both companies enjoy the advantages of immense purchasing power, both control their own tanneries, both have worked with highly skilled labor, highly compensated, and yet—through the tremendous economies of vase production—have been able consistently to improve the quality of their product without increasing the profit per pair.

"The International Shoe Company has 32 factories in Illinois, Missouri and Kentucky. The affiliated tanneries of Kistler, Lesh and Co. in Pennsylvania and North Carolina supply its sole leather. Through its three great distributors its shoes are sold every where, predominantly in the agricultural territories of the West and the South.

"McElwain shoes are made in New Hampshire, and in 10 McElwain factories, of leather tanned in two McElwain tanneries. Four McElwain factories supply other materials. McElwain leather is bought at the very source of [fol. 513] the world's supply. McElwain shoes are sold from the Atlantic to the Pacific—particularly in the large cities and great industrial centers. * * *

"Why These Two Successful Enterprises Merge

"In their swift rise to the top of the shoe industry, the two companies have followed parallel lines of reasoning; to each in his field this ideal has brought success; * * *

"Both companies have met common problems. Their paths have seldom crossed, for the companies have not been largely competitive. They were fellow travellers who saw that the strength of both companies could be brought together to carry both more rapidly to their goal—to the utmost elimination of waste in making better shoes and dis-

tributing them to the men, women and children of the country."

Paragraph Nineteen. On May 24, 1921 W. H. McElwain Company issued a circular letter to its first preferred stockholders explaining the offer of the respondent for the purchase of the stock of W. H. McElwain Company. A copy of that letter appears in the record as Commission's Exhibit 1 and contains the following statements:

"We have had friendly relations with the International Shoe Company for years. We have the highest opinion of the ability and high character of the management of that company. Their business has been predominantly in the West and South; ours predominantly in the East. They have sought primarily to distribute their products in the great agricultural and mining districts of the country; we enjoy a large business from retailers in large cities. Separately there has been little conflict in our respective fields of activity; we compete only on the fringe. The amalgamation of the interests of the two companies, therefore, brings immediately to the new organization a nation-wide and well balanced distribution of its products. Both companies have followed similar ideals of large scale production, continuous operation of plants in a seasonal industry, and low cost dis- [fol. 514] tribution; in short, both have attempted to place in the hands of the American People a well made product at the lowest possible cost.

"The International Shoe Company have not been willing to make an offer to purchase outright the assets of our company, but they have said that if they could maintain the continuity and the good-will and the management of our company, which they felt could be assured only by the purchase of each of our three classes of stock, they would be willing to do so, but upon no other basis would they consider an amalgamation of the interests of the two companies."

Paragraph Twenty. By the acquisition of the stock or share capital of W. H. McElwain Company the respondent gained control of the largest manufacturer of street and dress welt shoes for men and boys, and eliminated from the field of competition respondent's largest competitor in

the sale of men's dress shoes, and secured immediate entrance into the sales territory of the New England States, and accomplished a nation-wide distribution of its products.

Paragraph Twenty-one. On June 16, 1921, more than a month after the acquisition of the stock or share capital of the W. H. McElwain Company, the respondent issued a circular letter to its stockholders and advised them of the acquisition of W. H. McElwain Company and another company. A copy of that letter appears in the record as Respondent's Exhibit 26, and contains the following statement regarding the profits from the acquisitions:

"We paid for nothing except the actual, tangible values of the two companies—nothing was paid for good-will—and there has been secured to the International Shoe Company a book profit of about $1,000,000.00 based on true values of the purchased properties as evidenced by the inventories and the appraisals submitted to us when the purchases were made."

Paragraph Twenty-two. On July 12, 1921, Frank C. Rand, president of respondent, wrote Stanley King of W. H. McElwain Company and directed that the McElwain stock purchased by respondent should still stand in the name of members of the McElwain Company's board, and [fol. 515] that stock exchanged by other stockholders should be reissued either to Stanley King or Stanley King and C. J. Prescott, and that after such transfer the new certificates should be endorsed in blank and forwarded to respondent. Immediately after the purchase by respondent of the stock or share capital of W. H. McElwain Company all competition between respondent and W. H. McElwain Company in the sale of shoes in interstate commerce wholly ceased. After respondent acquired the stock or share capital of W. H. McElwain Company, respondent sold three of the McElwain branches or sales houses located respectively at Boston, New York and Kansas City, and closed down and discontinued entirely the branches or sales houses at Columbus, Ohio, Chicago, Illinois, and San Francisco, California, and W. H. McElwain Company became a branch of the International Shoe Company; Frank C. Rand, presi-

dent of respondent, was elected president of W. H. McElwain Company at the annual meeting in January, 1922, and continued as such president until after the complaint was issued in this proceeding.

Paragraph Twenty-three. The effect of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company was:

(a) To substantially lessen competition in commerce between International Shoe Company and W. H. McElwain Company in the sale of dress shoes for men;

(b) To restrain commerce in the shoe business and especially in that part of such business relating to the sale of dress shoes for men in various sections or communities of the United States in which International Shoe Company and W. H. McElwain Company were engaged in commerce;

(c) To restrain commerce in the shoe business in sections or communities of the United States including Columbus, Ohio; Kansas City, Missouri; and San Francisco, California, and in other sections or communities adjacent thereto.

Paragraph Twenty-four. Respondent's Exhibit No. 1 is the consolidated balance sheet of W. H. McElwain Company as of April 30, 1921. The balance sheet shows quick [fol. 516] assets of more than $21,000,000, and the plant and other assets made total assets of $27,100,437. The debts of W. H. McElwain Company on that date consisted of notes and accounts amounting to $17,177,349.25. The property of W. H. McElwain Company at the value shown in the balance sheet of April 30, 1921 exceeded its debts approximately $10,000,000. Respondent's Exhibit No. 32 is the consolidated balance sheet of W. H. McElwain Company as of May 31, 1921, and was made subsequent to the acquisition of the stock or share capital of W. H. McElwain Company by respondent. That balance sheet shows assets of $24,591,664.72, and debts amounting to $15,880,901.42. The property of W. H. McElwain Company at the value stated in the consolidated balance sheet of May 31, 1921 exceeded its debts by $8,710,763.30. Respondent's Exhibit No. 33 is the balance sheet of W. H. McElwain Company as of November 30, 1921, more than six months after

the acquisition by the respondent of the stock or share capital of W. H. McElwain Company. The assets of W. H. McElwain Company as of November 30, 1921 amounted to $17,691,317.78 while the debts amounted to $13,701,494.37. The property of W. H. McElwain Company as of November 30, 1921 exceeded its debts by $3,989,823.41. At and prior to the acquisition by respondent of the stock or share capital of W. H. McElwain Company the aggregate of the property of W. H. McElwain Company, at a fair valuation, was more than sufficient in amount to pay its debts. W. H. McElwain Company was not insolvent prior to the acquisition of its stock or share capital by the respondent, nor subsequent thereto.

Paragraph Twenty-five. The complaint in this proceeding was issued on May 18, 1923, and duly served on the respondent, and charged that respondent had acquired the stock or share capital of W. H. McElwain Company in violation of Section 7 of the Clayton Act. Thereafter, on July 5, 1923 respondent filed its answer to such complaint, and specifically admitted certain allegations in the complaint, and denied other allegations therein. In addition to such admissions and denials, respondent's answer contains the following averments:

[fol. 517] "Fourth. And further answering respondent would respectfully show the commission that upon receipt of the complaint, and upon being advised that there was a possible technical violation of Section 7 of the Clayton Act, in its acquisition and ownership of the share capital of W. H. McElwain Company, this respondent took the necessary steps to remedy any such technical violation; that it has divested itself of any and all stock or share capital of W. H. McElwain Company; that it does not now own or control any stock or share capital of said W. H. McElwain Company; and that no officer, director or stockholder of respondent owns or controls any stock or share capital of said W. H. McElwain Company. Therefore, the premises considered, this respondent respectfully asks that this complaint be dismissed.

International Shoe Company, by F. C. Rand, President."

Paragraph Twenty-six. Subsequent to the filing and service of the complaint in this proceeding, respondent adopted a program for the discontinuance of W. H. McElwain Company as a going concern and the acquisition of its assets by respondent. The program was to sell the capital stock of W. H. McElwain Company and purchase its assets. Late in May or early in June, 1923, F. C. Rand, president of respondent company, resigned and the directors and officers were replaced by other directors and officers holding qualifying shares of stock owned by respondent. Clifford P. Warren succeeded Rand as president, Edward L. Prescott succeeded Stanley King as vice-president and Miss C. S. Howland succeeded him as treasurer. Miss Howland was secretary to Clifford P. Warren. King was at that time, and still is, eastern representative of respondent in Boston, in immediate charge of the plants and business of its McElwain branch. May 18, 1923 president Rand of respondent corporation instructed Stanley King to see the chairman of the Federal Trade Commission regarding rumored action against the company for the purchase of the W. H. McElwain Company's stock. King carried out [fol. 518] the instructions, and subsequently went to St. Louis to report to Rand. A conference, including King, Jackson Johnson, president of the board, Rand, president of respondent, and R. E. Blake, attorney for respondent, was held to determine on a course of action. As a result of such conference King was authorized to arrange for a disposal of the stock of the McElwain Company and the acquisition of its entire assets, tangible and intangible, by respondent. King first negotiated with New York bankers, Burr & Co., for the sale of the stock, but Burr demanded the written agreement of respondent to buy back the assets after the bankers had bought the stock. Negotiations with Burr & Co. were dropped, and King proceeded to Boston.

Paragraph Twenty-seven. As a result of a further conference at St. Louis between Rand, Johnson and Blake, Blake was instructed to proceed to Boston and arrange for the dissolution of W. H. McElwain Company and the taking over of its properties and assets by respondent. Under date of June 4, 1923 respondent made alternative offers in writing to W. H. McElwain Company for the purchase of

W. H. McElwain Company's properties and assets, beginning such offer with the following sentence:

"We offer to buy from you all your properties and assets, real, personal and mixed, tangible and intangible, of any and all descriptions, whether carried on your books as valuable assets or otherwise, upon the basis outlined hereinafter. This offer to buy shall be open for your acceptance until 12 o'clock noon, Eastern time, on Wednesday, June 13, 1923."

Respondent offered to pay $4,063,125.89 for such assets of W. H. McElwain Company and assume and liquidate all liabilities of W. H. McElwain Company, or pay $16,537,-821.91 for such assets on condition that W. H. McElwain Company liquidate all its liabilities in its own way without cost to respondent. It was declared, in such offers, that the sums offered were arrived at in each instance "by taking the total net value of your properties and assets as shown by your books and by an audit thereof made by Marwick, Mitchell & Company as of April 30, 1923 and [fol. 519] adding thereto the sum of $1,500,000." On June 12, 1923 respondent's board of directors authorized Rand and Sudholt, president and treasurer, respectively, of respondent to contract for the purchase of the assets and properties of W. H. McElwain Company. On the same date the time for acceptance of the offers was extended to June 20, 1923. The offers herein set forth were the second offers of respondent and succeeded like offers made a few days previously for $1,000,000 less. At the time that the above offers and authorization were made, W. H. McElwain Company's officers and directors were such by virtue of holding for respondent stock owned and controlled by respondents.

Paragraph Twenty-eight. It was explained by president Rand that the increase of a million dollars in the offers was to put the offers beyond criticism of certain minority stockholders who threatened trouble, and as the respondent would get back in stock liquidation the extra amount paid for assets, it made no substantial pecuniary difference to respondent. Through Charles J. Prescott, formerly vice-president of W. H. McElwain Company and an associate

of Stanley King, King was placed in touch with Pierre E. Bonin, vice-president of Bennett, Limited, of Chambly, Province of Quebec, Canada. Between June 8 and 15, 1923 King and Bonin entered into an agreement that Bennett, Limited, would purchase 69,946 shares of the first preferred stock and 491 shares of the common stock of W. H. McElwain Company, and that respondent would surrender to Bennett, Limited, for cancellation all its remaining holdings of second preferred and common stock of W. H. McElwain Company, and would acquire from stockholders and turn over to Bennett, Limited, 50 shares of common stock of W. H. McElwain Company not then held by respondent. The portion of the agreement dealing with the sale of first preferred and common stock to Bennett, Limited, was reduced to writing and executed by King for respondent and by Bonin for Bennett, Limited, on June 15, 1923. The portion of the agreement dealing with the surrender of other stock for cancellation and of securing and surrendering to Bennett, Limited, of the additional 50 shares of stock [fol. 520] remained an oral agreement. The 50 shares of common stock were later acquired and turned over to Bennett, Limited.

Paragraph Twenty-nine. Upon signing the agreement with Bennett, Limited, June 15, 1923, King authorized Old Colony Trust Company of Boston, transfer agent of the W. H. McElwain Company stock, to transfer such stock to Bennett, Limited. At the time respondent sold the stock of W. H. McElwain Company to Bennett, Limited, for $4,061,094.14 respondent had invested in W. H. McElwain Company stock as purchase price $9,470,832.50 and had advanced to that company about $12,000,000, so that respondent's total investment in McElwain Company was about $21,500,000. Through this investment respondent had acquired access to the New England territory and to customers for men's and boys' dress shoes in large cities and had removed from the field of competition the largest maker of such shoes. At the time that Bennett, Limited, agreed to pay respondent $4,061,094.14 for the capital stock of the McElwain Company, Bennett, Limited, had been informed that the liabilities of W. H. McElwain Company were about $12,000,000 and its gross assets about $14,500,000, and that its net assets were worth only about

$2,500,000, and that the price Bennett, Limited, offered for the stock was about $1,500,000 in excess of the net value of the assets of the company. Bennett, Limited, was not a shoe manufacturer nor a shoe merchant, and had no experience in the operation of shoe-making plants. No payment was made by Bennett, Limited, for or on account of the stock at the time the agreement was signed and the stock ordered transferred to it.

Paragraph Thirty. A special meeting of stockholders of the W. H. McElwain Company was held at Boston, Mass., June 20, 1923. Bennett, Limited, appeared by its proxy, Pierre Bonin, representing 69,946 shares of first preferred stock. J. Franklin McElwain and Stanley King, joint tenants, were represented by their proxy, Stanley King; Clifford P. Warren, Edward L. Prescott, Charles J. Prescott and Frederick B. Smith were present in person. Messrs. Warren, Prescott and Smith and Miss Howland held shares of stock belonging to respondent. Acts of the board of [fol. 521] directors since January 25, 1923 were approved. By resolution the capital stock was reduced by retirement, cancellation and extinguishment of the following items in the treasury: 1,419 shares of first preferred stock of the par value of $100 each; 2,000 shares of second preferred stock of the par value of $50 each; 104 shares of common stock of the par value of $50 each. The capital stock was further reduced by cancellation and extinguishment of 52,000 shares of second preferred stock, par value $50 each, and 69,340 shares of common stock of the par value of $50 each, which was submitted or surrendered by respondent for such cancellation. The meeting adjourned for 15 minutes in order to file at the State House with the Secretary of the Commonwealth of Massachusetts an amendment to the articles of incorporation providing for the reduction in capital stock. On reassembling, the alternative offers of respondent for the assets of the W. H. McElwain Company were submitted, and the stockholders accepted the offer of $4,063,125.89 for the purchase of all "the property and assets of W. H. McElwain Company of any and all descriptions". It was a condition of this purchase that respondent should assume and liquidate the liabilities of the W. H. McElwain Company. It was also provided that W:

H. McElwain Company agree to sell for the sum of one dollar at any time that W. H. McElwain Company may be dissolved, or as soon thereafter as is lawful, the sole right to the use of the name W. H. McElwain Company. The board of directors were at the same time authorized and instructed "that when the company shall have conveyed all its property and assets in accordance with the offer of International Shoe Company and the acceptance thereof at this meeting, to distribute the purchase price among the stockholders of the company as a distribution of capital in liquidation of the company, at such time or times and in such amounts as the board shall determine, but in accordance with the requirements of the articles of organization and by-laws of the company". The board of directors were authorized to liquidate and dissolve the company, including, if the board shall so determine, proceedings for its dissolution under the General Laws of Massachusetts. [fol. 522] The meeting then adjourned until Wednesday, June 27, 1923. No further meeting is disclosed by the record.

Paragraph Thirty-one. The board of directors of W. H. McElwain Company met at Boston, Mass., Wednesday, June 20, 1923, in special session, with Clifford P. Warren, chairman of the board, presiding, and Miss C. S. Howland, secretary of the company, keeping minutes. Charles J. Prescott was elected to fill a vacancy upon the board. A resolution was adopted authorizing the instructing Clifford P. Warren, president, to carry out the terms of the offer and acceptance as to the purchase and sale of the assets and properties of W. H. McElwain Company to respondent, and to execute such conveyances, contracts and other instruments as to him shall seem necessary or desirable in connection therewith. The president was also authorized and instructed to execute an agreement or conveyance in writing, dated June 20, 1923, which was presented to the meeting, such agreement being between W. H. McElwain Company and International Shoe Company, and also to execute deeds and conveyances covering specific property listed in the resolution. Warren was also instructed, as president, after he had received the purchase price for the properties and assets of the company, to pay to the stockholders $58.060414 for each share of the first preferred

stock held by them, "upon receipt from each such stockholder of such receipt or a release as shall seem to said Clifford P. Warren sufficient and satisfactory, the said payment being in distribution of capital in liquidation of the company". The action of Warren in opening, on June 16, 1923, an account for W. H. McElwain Company in the National Bank of Commerce in New York was ratified and approved, and it was provided that either Warren, president, or C. S. Howland, treasurer, might sign checks upon that account. Documents had already been prepared in the form of deeds and memoranda of agreements, and these documents were executed upon June 20 or the next day, and the purchase by respondent of the assets of W. H. McElwain Company was thus consummated.

Paragraph Thirty-two. On June 21, 1923, Clifford P. [fol. 523] Warren, president of the W. H. McElwain Company, Stanley King, R. E. Blake, attorney representing respondent, and Pierre E. Bonin, representing Bennett, Limited, met in the National Bank of Commerce of New York City. King, by direction of respondent, had arranged for an additional credit with the bank of $4,000,000 and secured it June 21, 1923, by depositing a day note, or clearance note, signed by officers of respondent and sent to King June 19, 1923 from St. Louis. King filled in the date "June 21, 1923". King had also in his possession a check drawn in favor of the International Shoe Company by Bennett, Limited, for $4,061,093.72, the agreed purchase price of the stock of W. H. McElwain Company bought by Bennett, Limited. This check King had held by agreement with Bennett, Limited, without presenting it for payment until this date. When such check was issued Bennett, Limited, did not have funds to its credit to pay the check. Respondent had also sent to King, on June 18, 1923, by mail, a check on the National Bank of Commerce for $4,063,125.89, drawn to the order of W. H. McElwain Company as payment for W. H. McElwain Company's assets and properties. This check King handed to Clifford P. Warren, president of W. H. McElwain Company, at the bank, or on the day before in Boston. Pierre E. Bonin, vice-president of Bennett, Limited, was handed by Warren, a check drawn on the National Bank of Commerce by

W. H. McElwain Company for $4,061,093.72, the exact amount which Bennett, Limited, had agreed to pay respondent for W. H. McElwain Company stock. Warren, as hereinabove stated, had opened an account for W. H. McElwain Company in this bank on June 16, 1923 by a deposit of $1,000. Bennett, Limited, had a small account in the bank at that time. The check given Bonin by Warren represented the liquidation value of the stock of W. H. McElwain Company which Bennett, Limited, had agreed to purchase. King deposited with the bank respondent's day note or clearance note, thus adding $4,000,000 to respondents credits in the National Bank of Commerce of New York. Warren, as president of W. H. McElwain Company, endorsed the check drawn by respondent upon this bank and given to McElwain Company for its assets and properties, and King immediately deposited such check to the [fol. 524] credit of W. H. McElwain Company, thus transferring $4,063,125.89 from respondent's account to the credit of W. H. McElwain Company. At the same time, Bonin endorsed the check for $4,061,093.72 drawn in favor of Bennett, Limited, by W. H. McElwain Company upon the same bank and representing the liquidation value of the stock of W. H. McElwain Company which Bennett, Limited, had agreed to purchase from respondent. King immediately deposited that check in the National Bank of Commerce of New York to the credit of Bennett, Limited, thus transferring a credit of $4,061,093.72 from W. H. McElwain Company's account to Bennett, Limited. King then endorsed the check drawn in favor of respondent by Bennett, Limited, upon this same bank for the agreed price of the stock of W. H. McElwain Company which Bennett, Limited, had undertaken to purchase from respondent, and King deposited the check to the credit of respondent, thus transferring to respondent the credit of $4,061,093.72 which Bennett, Limited, had just obtained from the W. H. McElwain Company's check. The National Bank of Commerce then charged $4,000,000 against respondent's account and took up and marked paid the day note or clearance note which King had deposited earlier in the day to the credit of respondent as the basis for an additional credit of $4,000,000, and the transaction was closed. The whole transaction as detailed in these findings was a transfer of the

assets and properties of W. H. McElwain Company by and to the respondent and was accomplished by the circuitous methods described. It does not appear that Bennett, Limited, had at any time any substantial interest in such transaction, but was lending itself to such transaction as a vehicle to accomplish the transfer.

Paragraph Thirty-three. Bennett, Limited, is a Canadian corporation. It has no office in the United States and had none at the time this transaction occurred so far as King knew. The address of Bonin is Chambly, Province of Quebec, Canada, and King has not seen Bonin in the United States since June 21, 1923. The account of Bennett, Limited, with the National Bank of Commerce in New York was small. A copy of that account for the entire month [fol. 525] of June 1923 is shown in the record as Commission's Exhibit No. 23. The balance to the credit of Bennett, Limited, on May 31, 1923 was $639.45, and the balance to the credit of Bennett, Limited, on June 30, 1923 was $2,623.13. The sum to the credit of Bennett, Limited, in the National Bank of Commerce in New York during the month of June, 1923, never amounted to more than a few thousand dollars, except on June 21, 1923 when the sum of $4,061,093.72 was credited to the account of Bennett, Limited. A like sum was charged against the account of Bennett, Limited, on the same day.

Paragraph Thirty-four. The transactions between the respondent and Bennett, Limited, were not bona fide, and the respondent did not in good faith divest itself of the stock or share capital of W. H. McElwain Company. The respondent did not take the necessary steps to remedy the violation of Section 7 of the Clayton Act, as it alleged in the fourth paragraph of its answer, and it has not remedied such violations. The acquisition by the respondent of the stock or share capital of W. H. McElwain Company was in violation of Section 7 of an Act of Congress approved October 15, 1914 (Clayton Act). The transfer to the respondent of the assets, properties, rights and privileges of W. H. McElwain Company was a mere artifice and subterfuge to evade said Act of Congress, and to escape the penalties thereof. By such acquisition, artifice and subterfuge the respondent secured, and retains and enjoys,

the fruits, benefits and advantages of an illegal acquisition of stock or share capital of a competing corporation engaged in commerce, viz., the W. H. McElwain Company. W. H. McElwain Company has not been dissolved and is still in existence as a corporation.

Conclusion.

The acquisition by the respondent of the stock or share capital of W. H. McElwain Company, as stated in the foregoing findings as to the facts, constituted a violation of an Act of Congress approved October 15, 1914, entitled "An [fol. 526] Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", and especially of Section 7, thereof.

By the Commission:

Vernon W. Van Fleet, Chairman.

Dated this twenty-fifth day of November, 1925.

Attest: Otis B. Johnson, Secretary.

NOTE.—Commissioners Nugent and Thompson dissent to the omission from Paragraph Twenty of the foregoing findings of the words "the effect of such acquisition by respondent of such stock or share capital tended to create in the respondent a monopoly in commerce in the shoe business," and to the omission from Paragraph Twenty-three of the words "to tend to create in International Shoe Company a monopoly in commerce of the shoe business" as sub-paragraph (d) thereof.

Otis B. Johnson, Secretary.

[Title omitted]

BEFORE FEDERAL TRADE COMMISSION

ORDER TO CEASE AND DESIST AND DIVEST, ETC.—NOV. 25, 1925

This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on International Shoe Company, the answer of the respondent thereto, the testimony and evidence on file, and

the brief and arguments of counsel. Thereupon the Federal Trade Commission made a report in waiting in which it stated its findings as to the facts with its conclusion that International Shoe Company is and has been violating the [fol. 527] provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially Section 7 thereof.

It is therefore ordered that International Shoe Company:

1. Divest itself of all stock or share capital of W. H. McElwain Company, a corporation, which it may now hold or own, directly or indirectly, together with all right, title, interest and claim in and to such stock or share capital, substantially all the stock or share capital of W. H. McElwain Company being found and declared to have been acquired and to have been held, owned and used by International Shoe Company in violation of Section 7 of said Act of Congress.

2. Cease and desist from the ownership, operation, management and control of the assets, properties, rights and privileges acquired by it from W. H. McElwain Company subsequent to the acquisition by it of the stock or share capital of W. H. McElwain Company, together with all improvements and additions thereto, which assets, properties, rights and privileges are found and declared to have been acquired and to be now held by International Shoe Company as the result of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company in violation of Section 7 of said Act of Congress.

3. Divest itself of all assets, properties, rights and privileges acquired by it from W. H. McElwain Company subsequent to the acquisition by it of the stock or share capital of W. H. McElwain Company, together with all improvements and additions thereto, which assets, properties, rights and privileges are found and declared to have been acquired and to be now held by International Shoe Company as the result of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company in violation of Section 7 of said Act of Congress.

4. Submit, within sixty (60) days from the date of this order, for the consideration and approval of the Federal

Trade Commission, a plan for the performance of this order in a manner which shall restore in harmony with the law the competitive conditions which existed with respect [fol. 528] to the respondent and such assets, properties, rights and privileges prior to the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company.

By the Commission, Commissioners Hunt and Humphrey dissenting. Commissioner Humphrey filed a memorandum of dissent, concurred in by Commissioner Hunt, which is attached.

Otis B. Johnson, Secretary.

ARB:k.

Before Federal Trade Commission

[Title omitted]

Dissenting Opinion of Commissioner Humphrey

In this case the evidence shows the following facts:

1. That the respondent acquired the stock of the McElwain Company.

2. That the respondent and the McElwain Company at the time were in competition. Whether such competition was material, is a matter of opinion.

3. That the McElwain Company initiated the transaction.

4. That at the time of the transaction the McElwain Company was in a failing financial condition, or at least its officers believed that it was, and they believed that its bankruptcy was probable.

5. That the respondent at the time had taken more orders than it was able to fill, at its then capacity, and was considerably troubled with these excess orders, and was very desirous, for this reason, of increasing production.

6. That it used the organization and assets acquired from the McElwain Company in increasing its output, largely for the purpose of filling these excess orders.

7. That the respondent did not increase prices; on the contrary, in some instances, it voluntarily decreased prices.

8. That it made better shoes, and sold them for the same or less money than the McElwain Company was selling the same class of shoes at the time the respondent acquired its stock.

9. That the respondent did not use the stock so acquired [fol. 529] by voting or otherwise to bring about, or attempting to bring about, the substantial lessening of competition.

10. That the public was in no degree, in any way, injured by the transaction. On the contrary, the evidence shows that the public was benefited thereby.

Questions of Law

Admitting, but not asserting, that there was substantial competition between the respondent and the McElwain Company at the time of the transaction complained of, it was probable that this competition was going to be destroyed by the failure of the McElwain Company. This circumstance removed the very evil that the statute was intended to prevent. This being true, the transaction was not unlawful. (American Press Association v. United States, 245 Fed. 91.)

It seems to me that this case comes squarely within the exception of paragraph one of Section 7 of the Clayton Act, as modified by paragraph three of said section.

Was the public injured by this transaction? Contrary to the majority, I think that this is the vital and should be the determining question in this case.

The evidence does not show or tend to show that prices were increased by this transaction. In fact, the evidence tends to show that prices were reduced. The evidence also tends to show that the public was furnished with a better grade of shoes for the same or less money. Because of this transaction no one has had to pay a cent more for a pair of shoes and no one has been caused to buy a pair of shoes of inferior quality.

The extent of the respondent's sinning, in so far as the evidence shows, was that it bought the stock of a competitor, at the instance of that competitor, to save such competitor from bankruptcy, and to acquire additional facilities which it badly needed to fill orders that it had already taken.

There is no evidence showing that this stock was bought for other than investment purposes, nor is there evidence showing that such stock has been used in any manner to substantially lessen competition.

[fol. 530] Had the respondent been content to wait, if we are to be guided by the evidence, then in a short time its competitor would have been bankrupt. The stockholders would have lost their entire investments. A great organization would have been destroyed and the competition with which the respondent is charged with destroying would have been wiped out without cost to the respondent of a dollar.

In this case, the commission has given warning to the business world that no one must answer the cry of distress. If they do, and save a vessel from complete wreck, no matter what the effect may be upon the public, they will be condemned and must suffer the penalty. But it will be perfectly proper and commendable to stand by until the vessel sinks, and its competition with them is thereby entirely destroyed, and then pick up whatever flotsam and jetsam they may, but under no circumstances must the vessel be saved, however much it may be to the public interest. I think such policy must inevitably injure the public and be immeasurably detrimental to our industries.

I cannot be oblivious to the fact that by the issuance of this order many innocent investors will be injured and that no one will be benefited.

The position of the majority in this case, if I correctly understand the facts, is that if one corporation acquires all of the stock of another competitive corporation, such acquisition is in violation of the Clayton Act, regardless of the purpose, effect and result of the acquiring of such stock, and that the commission must issue an order under such circumstances against the offending corporation, the commission having no discretion to do otherwise.

To this opinion I cannot subscribe. It is true that the phrase "in the interest of the public" is not written in the

Clayton Act, as it is in the Federal Trade Commission Act, in words, but in my judgment it is there by implication as plainly as if it were written in letters.

To issue this order will in all probability cause innocent stockholders to lose several million dollars. It will do no good to anyone. I cannot bring myself to believe that it is [fol. 531] the duty of the commission to issue an order where no good will result and evil must follow.

I, therefore, find myself compelled to dissent from the opinion of the majority.

W. E. Humphrey, Commissioner.

I concur. C. W. Hunt.

BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ORDER GRANTING RESPONDENT EXTENSION OF THIRTY DAYS IN WHICH TO FILE PLAN OF COMPLIANCE WITH ORDER OF COMMISSION—Jan. 26, 1926

Respondent having made application to the commission for an extension of thirty (30) days from January 24, 1926, in which to file a plan of compliance with the order of the commission issued November 25, 1925, which application is as follows:

"While we have made some progress on the outline of the plan for compliance to be submitted to the Commission, it will not be possible to have this in final form before January 24, 1926, the date specified in the order entered November 25, 1925. We therefore respectfully request that the time for submitting such plan be extended for thirty days following January 24, 1926.

Very truly yours, International Shoe Company. R. E. Blake."

[fol. 532] and the commission now being fully advised in the premises;

It is ordered that respondent be granted an extension of thirty (30) days from January 24, 1926, or to and including February 23, 1926, in order to file in this proceeding a

plan of compliance with the order of the commission issued November 25, 1925.

By the Commission:

Otis B. Johnson, Secretary.

BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ORDER GRANTING EXTENSION OF TIME WITHIN WHICH TO SUBMIT PLAN OF COMPLIANCE WITH COMMISSION'S ORDER—Feb. 26, 1926

This matter coming on to be heard upon the application of counsel for respondent herein for an extension of fifteen (15) days from February 24, 1926 within which to file a plan of compliance with the order of the commission; and the commission now being fully advised in the premises,

It is ordered that an extension of fifteen (15) days from February 24, 1926 (or to and including March 11, 1926), be granted respondent herein within which to file its plan of compliance.

By direction of the Commission.

Otis B. Johnson, Secretary.

[fol. 533] BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

MOTION TO SUSPEND OPERATION OF ORDER

Now comes respondent and, having heretofore filed its proposed plan of compliance with the commission's order of November 25, 1925, respectfully moves the commission to suspend the further execution of such order until the Supreme Court shall have announcel its decision in the case of the Commission v. Thatcher Manufacturing Company, decided April 16, 1925 by the Circuit Court of Appeals for the Third Circuit, to review which a writ of certiorari was granted in October 1925.

Respondent represents and shows that:

1. The Thatcher case presents for decision by the Supreme Court for the first time the construction and meaning of a portion of Section 7 of the Clayton Act relied upon by the commission in the instant case.

2. The Thatcher case (as respects one of four stock acquisitions there dealt with) involves facts somewhat similar and in part analogous to the facts shown on this record, so that the decision there might well be determinative of the issue here.

Frank Y. Gladney, J. D. Williamson, R. E. Blake,
Attorneys for Respondent.

BEFORE FEDERAL TRADE COMMISSION

MOTION FOR RECONSIDERATION

Comes now the respondent and, having heretofore filed its plan of compliance with the order of the commission issued November 25, 1925, respectfully moves the commission to reconsider and reverse said order on the merits, for the reason that it is against the public interest to have said order executed and for other reasons hereinafter set forth.

[fol. 534] Respondent is informed, believes and therefore alleges that the W. H. McElwain Company, whose stock was acquired by respondent in 1921, has been formally liquidated, and has been legally dissolved as a corporation by a proceeding in the Superior Court of Boston, Massachusetts; that it is not possible to sell to that corporation the properties acquired from it; that respondent does not now directly or indirectly own or control any of the share capital of said W. H. McElwain Company; that the properties acquired from said company and still owned by the respondent are mainly ten shoe factories, two tanneries and two sales branches; that the said properties have a replacement value of approximately seven million dollars and depreciated book value of approximately five million dollars.

Respondent is informed, believes and therefore alleges that the distressing conditions which existed in 1921 in the shoe industry in general and the conditions in the industry in New England in particular have not improved but on the contrary are now more acute that at the time this respondent acquired the McElwain Company; that there are already for sale with no buyers, scores of shoe factories particularly in the New England district; that this respondent has been approahed verbally and by letter with many offers to sell shoe factories and tanneries to it, particularly by concerns located in the New England district; that a civic organization of one of the largest shoe manufacturing centers in Massachusetts recently offered to turn over to this respondent without any capital investment on its part a large part or all of the shoe factories in that city, if the respondent would undertake to operate the same; that operations of shoe manufacturing plants, particularly in New England, have shown meagre profits or losses, with the result that it is a matter of common knowledge and concern in the many communities where those industries are located; that civic bodies are struggling to improve these conditions; that labor organizations in some instances have suggested and have voluntarily accepted wage reductions in an effort to prevent the closing of factories; that these conditions are accentuated in the New England district by the concomitant depression in the tex- [fol. 535] tile and leather industries; that respondent, after five years' struggle to bolster up its eastern production, has been forced in the last few weeks to reduce its production in the New England factories forty-six per cent; that since its acquisition of the McElwain factories this re spondent has maintained and sustained the production of shoes in those factories despite the fact that the same shoes could have been manufactured at less manufacturing cost in its western factories; that respondent could now, at some saving in manufacturing cost, produce in its western factories all of the shoes now being made in the McElwain factories; that the consumption of "men's dress welt shoes," such as are herein alleged to be the competitive product, has declined considerably since 1921; that since 1921 there has developed a revolutionary change in the methods of retailers in the purchase of shoes from

manufacturers; that whereas prior to 1921 retailers placed large future orders with manufacturers, thereby enabling the manufacturer to plan intelligently for regular and uniform production, yet now such future orders are negligible and the manufacturers of shoes must speculate as to the kinds and quantities of shoes which will be required; that these conditions are so deep-rooted that there is no prospect of immediate or even early change for the better.

Respondent further alleges that the conditions in the leather tanning business at the present time are much worse than the conditions in the shoe manufacturing business and that a forced sale of the two tanneries acquired from W. H. McElwain Company would have even more disastrous effects than would the sale of the other properties; that practically without exception tanning companies in the United States are in deplorable financial condition; that numerous tanneries are now for sale at ridiculous prices; and few, if any, are being operated at a prifit.

Respondent is informed, believes and therefore alleges that to announce publicly and to advertise for sale the ten shoe factories and other properties acquired from W. H. McElwain Company would be to precipitate a situation which would compound the distress which already exists in the industry and particularly the distress in the New [fol. 536] England district; and that it would revisit upon those communities and citizens the disaster which was impending over them in 1921 by reason of the financial predicament of the McElwain Company.

Respondent further alleges that the several towns and communities where the McElwain factories are located are dependent for their welfare upon the uninterrupted operation of these plants; that in some of these communities respondent's factory is the only industry of any consequence offering employment to the citizens; that if these properties are forced on the auction block, and a sale be made, there will inevitably result an interruption of operation and of employment for many months before the purchaser can convert the factories and build up manufacturing and sales organizations; that the present organization of managers, superintendents, executives and salesmen consists of individuals who through stock ownership and five years' employment have become thoroughly identified with this

respondent, and any sale of the properties would not necessarily carry with it the individuals who comprise the present organization; that on the other hand if offered for sale and no sale of said properties be made at the public offering this respondent's business will have been prejudiced, its employees unduly excited, alarmed and dispersed, and all to no good purpose.

Respondent would further show the commission that since its acquisition of the McElwain Company in 1921 it has, at considerable expense to itself, made alterations in machinery, equipment, etc., in the McElwain factories, converting many of them from production of men's dress welt shoes to radically different kinds of shoes; that this conversion amounts to more than 50 per cent of the production of those factories; that the arrangement and scheme of production in those factories have been adjusted to meet the requirements of the respondent and would not be suited to the needs or plans of any other shoe manufacturer without the expenditure of considerable money, time and economic waste; that any attempt to effect another change of ownership, management and operation at this time would only result in disaster.

[fol. 537] Respondent avers that the shoe manufacturing industry at the present time is one of the most highly competitive industries in the United States and respondent further alleges that there are in the United States about fifteen hundred shoe manufacturers who are in no wise controlled by this respondent; that of these there are over six hundred who have a capital investment of one hundred thousand dollars or more, or whose capacities are more than one thousand pairs of shoes per day; that furthermore there are over sixty such competitors of respondent whose capital investment in each case is one million dollars or more, and still others whose capacities are 10,000 pairs or more of shoes per day.

Respondent further avers that it is doing at the present time only about 12 per cent of the shoe manufacturing business of the United States, and that about 88 per cent of such business is done by others who are in no wise controlled or associated with respondent, but on the contrary are in competition with this respondent.

Prominent among such competitors with their daily production capacities for 1924 are:

Name	Location	Capacity, pairs
Endicott-Johnson Corporation	Endicott, N. Y.	130,000
Brown Shoe Company	St. Louis, Mo.	50,000
H. C. Godman Company	Columbus, Ohio	50,000
Hamilton-Brown Shoe Co.	St. Louis, Mo.	41,500
Craddock-Terry Shoe Co.	Lynchburg, Va.	30,000
Regal Shoe Company	Whitman, Mass.	30,000
Rosenwasser Bros., Inc.	Long Island City, N. Y.	31,000
H. Jacobs & Sons, Inc.	Brooklyn, N. Y.	30,000
Rice & Hutchins, Inc.	Boston, Mass.	20,000
Dingley-Foss Shoe Co.	Auburn, Maine	20,000
Thomas G. Plant Company	Boston, Mass.	17,000
Lewis A. Crossett Company	North Abington, Mass.	10,000
W. L. Douglas Shoe Company	Brockton, Mass.	10,000
R. P. Hazzard Company	Gardiner, Me.	10,800
Weyenberg Shoe Mfg. Co.	Milwaukee, Wis.	10,000
L. Q. White Shoe Company	Worcester, Mass.	10,000
Dorothy Dodd Shoe Co.	Boston, Mass.	17,000
[fol. 538] George E. Keith Company	Brockton, Mass.	20,000
Dunn & McCarthy	Auburn, N. Y.	11,000
C. A. Grosvenor Shoe Co.	Worcester, Mass.	10,000
Florsheim Shoe Company	Chicago, Illinois	10,000
Rubin Brothers Footwear	Long Island City, N. Y.	15,000
Wiley-Bickford-Sweet Co.	Worcester Mass.	20,000
A. G. Walton Co., Inc.	Lawrence, Mass.	34,000
J. F. McElwain Co.	Nashua, N. H.	13,000

Respondent's production is about 150,000 pairs per day; of these about 20,000 pairs are "men's dress welt shoes".

Respondent avers that in this highly competitive field, if this respondent be torn apart, competition will not be helped; that the result will be only to cripple one of the competitors of the others; that the only benefit that will accrue to anyone will be to its numerous competitors; that competition will be injured rather than fostered.

Respondent avers that in the manufacture of the "men's dress welt shoes", such as are herein alleged to be the competitive product, there are about one hundred and fifty firms which have capital of $100,000 or more, or whose daily capacities are 1,000 pairs of shoes or more; that many of these specialize in the manufacture of "men's dress welt shoes" and have a capacity for such shoes about equal to or larger than that of respondent (including the McElwain factories).

Respondent would further show the commission that the competitive field in shoe manufacturing is large and easily accessible to the individual or firm of small capital; that

such individuals or firms need not purchase shoe machinery, but may rent it on royalty and other bases which require no initial capital outlay; and that, therefore, the greater proportion of the shoe manufacturing business in the United States is done by the firms of small capital.

Respondent further alleges that since the acquisition in 1921 it has not increase- prices to the consumer, lowered the quality or oppressed its employees or the public, but on the contrary it has lowered its prices, improved quality and dealt fairly with its employees and the public.

[fol. 539] Respondent further alleges that since the acquisition of W. H. McElwain Company in 1921, competition in shoe manufacturing has been increased rather than lessened, and that the increased competition is directly traceable to and the result of said acquisition; that J. F. McElwain, the former president of W. H. McElwain Company, has established and is operating, in two of respondent's factory towns, shoe factories for "men's dress welt shoes"; that he is using the name "McElwain" in the style of his firm; that his firm alone is now making more than twice as many "men's dress shoes" as were made by W. H. McElwain Company in 1921; that with him in said business are two former directors and officers of W. H. McElwain Company (S. M. Patterson and F. P. Murphy) who have invested therein the money received by them from this respondent; that another director of W. H. McElwain Company, A. G. Matless, has invested the money received by him from this respondent in the Commonwealth Shoe & Leather Company and is actively associated with that competitor at the present time; that another director, Lawrence Allen, invested the money received by him from this respondent in the F. M. Hoyt Shoe Company and was until recently associated with that competitor; that other executives and stockholders of W. H. McElwain Company have since 1921 joined other firms which are competing with respondent.

Wherefore, respondent alleges that the effect of the acquisition in 1921 as demonstrated by the actual developments of the last five years, has not been to lessen competition or restrain trade but on the contrary has been to foster competition and increase trade; that to the large increase in production and business effected by the respond-

ent in the McElwain factories, there has been added the new production and business of J. F. McElwain Company and others.

Respondent submits that the foregoing allegations of fact can be proven to the satisfaction of the commission, and if the commission so decides the respondent will cooperate with the commission in the taking of such proof.

Premises considered respondent respectfully submits that the execution of this order will do much harm to many [fol. 540] and no good to anyone and should therefore be reconsidered and reversed. And respondent requests that it be granted an oral hearing on said motion on a day certain to be set by the commission.

F. Y. Gladney, J. D. Williamson, R. E. Blake, Attorneys for Respondent.

BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ORDER SUSPENDING EXECUTION OF ORDER—June 2, 1926

The above entitled proceeding coming on for consideration by the commission upon the request of counsel for respondent to suspend further execution of the order herein until the Supreme Court shall have announced its decision in the case of the Commission v. Thatcher Manufacturing Company, and the commission having considered the matter and being advised in the premises,

It is ordered that the enforcement of the commission's order be and the same is hereby suspended until the matter of Thatcher Manufacturing Company, Docket 738, the matter of Swift & Company, Docket 453, and the matter of Western Meat Company, Docket 456, now pending in the Supreme Court of the United States, are decided.

[fol. 541] Commissioners Nugent and Thompson dissented.

By the Commission.

Otis B. Johnson, Secretary.

BEFORE FEDERAL TRADE COMMISSION

PETITION FOR RECONSIDERATION AND DISMISSAL OF THE COMPLAINT

Further proceedings in this matter having been suspended, on June 2, 1926 until the United States Supreme Court should render its decision in the three cases of Federal Trade Commission against the Thatcher Manufacturing Company, Swift & Co. and Western Meat Company and the United States Supreme Court having rendered its decision in said cases,

Comes now respondent and respectfully petitions the commission to review and reconsider the issues herein involved upon the merits and upon such review and reconsideration, and that the order of November 25, 1925 be set aside and the complaint dismissed.

Respondent respectfully submits that the statute clearly contemplates that the commission, after entering a given order, may continue to hold it under advisement for revision or modification, for it states:

"Until a transcript of the record in such hearing shall have been filed in a Circuit Court of Appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

Respondent further submits that the Federal Trade Commission has heretofore established precedence in its procedure, under which cases within its jurisdiction have been reopened and reviewed after the final order therein had been entered.

As grounds for its petition this respondent would respectfully show the commission:

First. That since the order of November 25, 1925 was [fol. 542] entered herein, the United States Supreme Court has rendered a decision which is controlling here. Respondent refers to that part of the case of Thatcher Manufacturing Company v. Federal Trade Commission which involved the acquisition of the capital stock of the Wood-

bury Glass Company. It was held that the pre-existing competition not being substantial there was no violation of Section 7 of the Clayton Act when Thatcher Mannfacturing Company acquired the capital stock of Woodbury Glass Company.

All of the evidence in respondent's case shows less competition than was shown in the Woodbury phase of the Thatcher Manufacturing Company case.

Second. That the order in this case was entered by a divided commission over a strong dissenting opinion; that the bare majority of the commission was misled, by an irrelevant definition of insolvency, into finding that the McElwain Company was solvent at the time of acquisition, whereas in law and in fact it was clearly insolvent.

Third. That this order is contrary to all precedents in which the courts have passed upon the acquisition of embarrassed and failing concerns; that in the three leading cases (Shawnee Compress Company v. Anderson, 209 U. S. 423, the Steel Corporation case, 251 U. S. 417, and American Press Association v. United States, 245 Fed. 91) the courts held that the acquisitions of failing (but not bankrupt or insolvent) competitors should not be prohibited under the Anti-Trust Laws.

It is indisputably true that the McElwain Company was financially embarrassed and was failing.

Fourth. Regardless of the harm to this respondent and its stockholders, a disruption of this business organization will accomplish no good and will entail grievous harm to the many communities in New England where the factories are located, will adversely affect the shoe industry in New England and will bring hardship and privation to the thousands of employees of respondent who are dependent upon uninterrupted operation of these factories for a livelihood. In short, the enforcement of this order, instead of being [fol. 543] in the public interest, will in fact be a subversion of the public welfare to the benefit of no one.

For the reasons above assigned, the order entered on November 25, 1925 should not be allowed to stand, but should be set aside and this complaint dismissed.

Wherefore, respondent earnestly asks that the commission reconsider the several issues herein and that respond-

ent be given an oral hearing on a day certain to be set by the commission.

International Shoe Company, by Frank Y. Gladney, R. E. Blake, Its Attorneys.

BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ORDER FOR LEAVING—Mar. 8, 1927

Upon the application of counsel for the commission and counsel for the respondent, it is

Ordered that the above proceeding be and the same hereby is set down for argument before the commission on the eighteenth day of March, 1927, at 2 o'clock in the afternoon of that day, for consideration of the plan of compliance with the order to cease and desist and divest entered November 25, 1925 and respondent's petition filed January 20, 1927 for reconsideration of this case and dismissal of the complain- herein.

By the Commission.

Otis B. Johnson, Secretary.

[fol. 544] BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION OF THE ORDER AND DISMISSAL OF THE COMPLAINT—May 10, 1927

The respondent having filed motions and petitions to review and reconsider the issues herein and to set aside the order and dismiss the complaint issued in this proceeding, and a hearing thereon having been given the respondent before the commission, and such motions and petitions being duly considered and understood by the commission:

It is ordered that the pending motions and petitions of the respondent to review and reconsider the issues herein,

and to set aside the order and dismiss the complaint in this proceeding, be, and the same are hereby, in all things overruled and denied.

By the Commission, Commissioners Hunt and Humphrey dissenting.

Otis B. Johnson, Secretary.

ARB:AF.
May 7, 1927.

[fol. 545] BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ORDER DISAPPROVING RESPONDENT'S PLAN OF COMPLIANCE—June 30, 1927

A proposed plan of compliance with the order the commission heretofore entered in this proceeding was filed herein by the respondent on June 20, 1927, and thereupon the matter came on for hearing before the commission, and counsel for the respondent was heard in regard thereto, and such plan was duly considered and understood by the commission:

It is now ordered, that the proposed plan of compliance filed in this proceeding by the respondent on June 20, 1927 be and the same is hereby disapproved for the reason that such proposed plan is inadequate to insure a certain and complete divestiture by the respondent of the assets, property, rights and privileges of W. H. McElwain Company acquired by the respondent in violation of law;

It is further ordered, that counsel for the commission is authorized to confer with counsel for the respondent with a view to formulating an acceptable plan for complying with the commission's order in this proceeding, and that such plan embody the principles usually observed in dissolution decrees under the Sherman Act beginning with the Union Pacific case (226 U. S. 470), and provide for the ultimate conveyance of such assets, property, rights and privileges to persons, firms or corporations who will continue the shoe business in free and open competition with respondent; [fol. 546] The commission will view with favor the reconstruction of W. H. McElwain Company so far as possible by

the formation or organization of a new corporation of that name which will take over such assets, property, rights and privileges to the end that the stock or share capital of such corporation may be disposed of in such manner as not to inflict undue hardship on the respondent or its stockholders; this, however, being a mere suggestion for the benefit of counsel and shall not be regarded as the only method which the commission may consider or approve.

By the Commission.

Otis B. Johnson, Secretary.

[fols. 547-552] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 553] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1927

No. 2225

INTERNATIONAL SHOE COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

Exhibits

EXHIBIT A

May 20, 1927.

Mr. Chas. H. Schweppe, % Lee, Higginson & Co., Chicago, Illinois.

DEAR MR. SCHWEPPE: I was wondering if you expected to be in St. Louis, any time soon, for the reason that I have a matter of some importance that you possibly might be interested in. I hardly think that its worth your while, on account of the indefinite situation, to ask that you come down here, but if you will be here I shall be glad to talk over the matter with you, and if you expect to be here any time

soon if you will kindly wire me a day ahead, so that I might be here and in a position to see you, I will appreciate it.

Very sincerely, Jackson Johnson.

JJ:DM.

Lee, Higginson & Company

Chicago, May 23, 1927.

Mr. Jackson Johnson, Chairman of the Board, International Shoe Company, 1501 Washington Ave., St. Louis, Missouri.

DEAR MR. JOHNSON: Replying to your letter of May 20th I may be in St. Louis in the next week or two as I intended [fol. 554] to pay a visit to my Uncle and Aunt in Alton, Illinois. I will telegraph you a day or two ahead of time.

As this trip is partly dependent on business appointments in Chicago and New York I wish you would telegraph me if you feel that seeing me this week would be worth while, in which case I would try to come down the latter part of the week.

With kind regards,

Sincerely yours, Charles H. Schweppe.

CHS.RH.

P. S.—Since talking with you on the telephone, I will let you know a day or two in advance of when I will arrive in St. Louis. It may be the latter part of this week or the early part of next week.—C. H. S.

May 24, 1927.

Mr. Charles H. Schweppe, % Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: Replying to your letter of the 23rd, beg to say, it is not important that you make a special trip down here to see us, but in the event you are coming down to Alton it would be very little trouble to stop over in St. Louis and discuss the matter that you have in mind.

As the question involved is rather indefinite just at this time I cannot feel any assurance that it can be worked out,

but I thought a discussion of the subject, with you, might bring out something that would be worthy of consideration.

Very sincerely, Jackson Johnson.

JJ:DM.

Dictated by Mr. Johnson. Signed in his absence.

[Telegram]

Copy

Chicago Ill 25 813 A.

1927, May 25, AM 8 24.

Jackson Johnson, Chairman International Shoe Co., St. Louis, Mo.:

Will be at your office eleven o'clock Thursday May twenty sixth if this time convenient to you please telegraph.

Charles H. Schweppe.

[fol. 555] [Telegram]

Copy

St. Louis, Mo., May 25, 1927.

Charles H. Schweppe, % Lee, Higginson & Co., Chicago, Illinois:

Will be pleased to see you Thursday eleven o'clock.

Jackson Johnson.

Paid 9.15 a. m. JJ:DM. Chg. General Expense.

Lee, Higginson & Company

Chicago, June 1, 1927.

Mr. Jackson Johnson, Chairman International Shoe Company, St. Louis, Missouri.

My Dear Mr. Johnson: I talked with my partners about the McElwain Company and suggested that George Lee have a talk with Frank McElwain the early part of next week. Does this meet with your approval? I will be east

most of next week and will get in touch with you on my return the latter part of the week.

Sincerely yours, Charles H. Schweppe.

CHS:RH.

June 2, 1927.

Mr. Charles H. Schweppe, % Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: Your letter of the 1st is received. I note your suggestion about discussing the matter with Mr. McElwain. I do not object to this, provided, it is handled in a discreet manner. You know I spoke to you about the damage that would ensue to the Company should this matter become very widely circulated that we are trying to dispose of that property, therefore, I wish you would caution Mr. Lee in handling the matter, to do so in a way that would give as little publicity to the matter as possible.

I went into detail explaining our reason for wanting to dispose of the property and that is our only reason for offering it for sale.

Sincerely yours, Jackson Johnson, Chairman of the Board.

JJ:DM.

Dictated by Mr. Johnson. Signed in his absence.

[fol. 556] Lee, Higginson & Company

Chicago, June 3, 1927.

Mr. Jackson Johnson, Chairman International Shoe Company, 1501 Washington Avenue, St. Louis, Missouri.

MY DEAR MR. JOHNSON: Replying to your letter of June 2nd please rest assured that if we talk with Mr. Frank McElwain, it will be in confidential way and only for the purpose of finding out if he is interested, and I think of no reason why it should go further, unless he is interested. After our talk with Mr. McElwain I will let you know what he says.

I will see Messrs. Lee and Allen on Tuesday and find out if they have any other thoughts on the situation, if Mr. McElwain is not interested.

Sincerely yours, Charles H. Schweppe.

CHS:RH.

Lee, Higginson & Company

Chicago, June 11, 1927.

Mr. Jackson Johnson, Chairman International Shoe Co., 1501 Washington Avenue, St. Louis, Missouri.

DEAR MR. JOHNSON: Last Wednesday in Boston I saw Mr. Frank McElwain about the matter we discussed. He wanted to think it over and hopes to let me know his decision next week. As soon as he does, I will get in touch with you.

I think he might be interested in part of the business, but not as a whole, but this is only my size-up of what he said. If he is not interested, my people do not think of anyone else to approach, nor do they feel that now is a propitious time to form a new corporation to buy the property. If we do think of several people to approach, I imagine you would like to have me get in touch with you before approaching anyone. Please let me know about this.

With kind regards,

Sincerely yours, Charles H. Schweppe.

CHS:RH.

[fol. 557] June 13, 1927.

Mr. Charles H. Schweppe, c/o Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: Replying to your letter of June 11th, I note your remarks in reference to Mr. McElwain. I should not want the matter made public, as I indicated to you, for the reason, it would prove very injurious to our Eastern business should it become public property.

I am quite sure that I can trust you to handle the matter in a discreet way, therefore, I should not want to approach any one else on the subject unless it looked as if something might develop. In the meantime, I will await your further communications when you have heard from Mr. McElwain.

Sincerely yours, Jackson Johnson, Chairman of the Board.

JJ:DM.

Dictated by Mr. Johnson. Signed in his absence.

Lee, Higginson & Company

Chicago, June 27, 1927.

Mr. Jackson Johnson, Chairman Board of Directors, International Shoe Company, St. Louis, Missouri.

My Dear Mr. Johnson: This will confirm my telephone talk with you this morning to the effect that I talked with Mr. J. Frank McElwain in Boston last week on that matter, with the result that he said that after careful consideration he did not believe it would be to his company's best interests to make an offer. When I saw him several weeks ago in Boston he expressed the thought that he might be interested in one or two of the factories, but doubted if he would be interested in the company's plants in their entirety.

My people did not think of any one at the moment who might be interested, nor did they seem to feel that we might form a new corporation to make an offer. As I understood you to say when we were lunching together about a month ago that there was no special hurry we will [fol. 558] continue to be on the lookout among our friends—of course, all the time remembering that the matter is confidential. I don't feel very optimistic about bringing the desired result, but one can never tell.

With kind regards, I am,

Very truly yours, Charles H. Schweppe.

CHS:RH.

July 1, 1927.

Mr. Charles H. Schweppe, c/o Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

Dear Mr. Schweppe: The question you asked me over the telephone this morning in reference to the sale of the distributing branches in Boston and New York is one that has never been considered by the Company up to this time and, for that reason, I was not able to answer off hand.

I am quite sure that the sales branches have a potential value, possibly, greater than the actual assets. I feel sure, however, that we would take into consideration the value of the sale of the Company, provided, a proposition that would look attractive was submitted.

I hope that you will have an enjoyable outing in the Northwest this Summer and that you will not let any business interfere with your plans for your Summer outing.

Very sincerely, Jackson Johnson, Chairman of the Board.

JJ:DM.

Lee, Higginson & Company

Chicago, July 28, 1927.

Mr. Jackson Johnson, Cottage #1, Harbor Point, Michigan.

DEAR MR. JOHNSON: We heard a few days ago that our friends whom we thought might be interested in the purchase of the McElwain Company decided not to make the purchase. This is a disappointment and I feel that there is little chance of our finding a purchaser, but there remains the possibility of finding some people who would be [fol. 559] willing to form a new corporation to buy the McElwain assets. In the next week or two I hope to be east and discuss this with Mr. Lee and Mr. Allen.

I read several articles in recent issues of the Financial & Commercial Chronicle about the order of the Federal Trade Commission and your company's answer, so it appears that the controversy is more or less public property. If you would like to have me send you the clippings from the Financial & Commercial Chronicle, please let me know.

I had a fine trip to Yellowstone Park and the Canadian Rockies. Everywhere we went people were enthusiastic over the crop prospects, with the exception of corn which is backward.

Hoping you are having a pleasant summer and will stop in our office if you should happen to be in Chicago on your way home, I am,

Yours sincerely, Charles H. Schweppe.

CHS:RH.

Lee, Higginson & Company

Chicago, August 17, 1927.

Mr. Jackson Johnson, Cottage No. 1, Harbor Point, Michigan.

DEAR MR. JOHNSON: We may have found someone interested in the McElwain Company. We would like the following information as soon as possible:

(1) In event of purchase, would you have to have all cash, or would you accept stock in the company making the purchase? Of course you would have to be satisfied with the stability of this company. If you are not prepared to accept all stock, would you accept it in part?

(2) Would you sell the McElwain Company as a going concern, to include practically all items on both sides of the balance sheet, or just the plants?

(3) What would be approximately your lowest price as a going concern?

In St. Louis last spring, we reviewed in some detail the selling price and whether the McElwain Company would [fol. 560] be sold as a going concern or not, but I want to find out how you feel just now in the event our friends are interested.

I am trying to reach you on the telephone and was told you were on the golf course, but I hope to reach you this noon.

With kind regards,

Yours sincerely, Charles H. Schweppe.

CHS:S.

[Telegram]

Copy

Chicago, Ill., Sept. 2, 1927.

Jackson Johnson, Cottage No. One, Harbor Point, Mich.:

If you are in Chicago next week please telephone me or come to see me regarding McLewin.

C. H. Schweppe. 1137A.

Lee, Higginson & Company

Chicago, September 2, 1927.

Mr. Frank C. Rand, President International Shoe Company, 1501 Washington Avenue, St. Louis, Missouri.

DEAR MR. RAND: Our friends who may be interested in buying the McElwain Company asked if we could furnish some figures as to values and earnings. These do not need to be in great detail, but we are led to believe that something of that sort is necessary to carry our friends further. Any figures you sent us would be treated in confidence by our friends and shown to no one else unless there seems to be a real possibility of putting a trade through.

Thanking you for letting us know promptly about this, I am

Very truly yours, Charles H. Schweppe.

CHS:S.

Lee, Higginson & Company

Chicago, September 6, 1927.

Mr. Jackson Johnson, 1501 Washington Street, St. Louis, Missouri.

DEAR MR. JOHNSON: Replying to your letter of September 2nd, received only this morning, I am sorry to have [fol. 561] missed you Sunday. I was in the country but would have been glad to come in town to see you or talk with you on the telephone.

What our friends would like to have now are some figures as to values and earnings of the McElwain Company. I wrote to Mr. Rand on September 2nd regarding these, and if you can get them for us I think it will help further the deal.

Sincerely yours, Charles H. Schweppe.

CHS:S.

September 10, 1927.

Mr. Charles H. Schweppe, c/o Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: I have been delayed in furnishing you the data promised because when I reached home I

found that our Chief Auditor was absent and I wanted his check on the figures before I gave them to you.

I am submitting to you and, of course, I wish, in a way, that they be kept confidential; not disclosing them to any one except there is a possible purchaser of the McElwain Branch.

The net earnings are comparatively small but you must take into consideration the fact that the Eastern Department pays to the Company five percent on its daily balances. With the International Shoe Company being the holding Company the Branches are operated as if they had no actual investments and pay interest on the entire amount, both fixed and active, assets belonging to the International Shoe Company. In addition, the Branches pay all the taxes, depreciation and upkeep so that the earnings indicated represent the actual earnings over and above five percent of the capital investment.

I am explaining this to you because it is not, in my opinion, the usual method of arriving at earnings. Of course, you understand Mr. Schweppe, that the Company does not care to dispose of this property except under orders of the Federal Trade Commission as we feel that we are gradually getting matters in shape in the East where we could have made some real money. You, of course, understand that we charged off several million dollars in [fol. 562] 1921 and also in 1922 but we have finally cleaned up the conditions down there and, we believe, that if we were permitted to continue to operate that we could develop a valuable adjunct to the Company.

In reference to submitting a price, Mr. Rand tells me that when he was last in Boston he talked with Mr. Lee, of your firm, about it and that Mr. Lee stated to him that he did not care for a fixed price on the McElwain interest.

Now if you find that you have a buyer who is sufficiently interested we will be very glad to go further into the matter.

Yours very truly, Jackson Johnson, Chairman of the Board.

JJ:DM.

Lee, Higginson & Company

Chicago, September 12, 1927.

Mr. Jackson Johnson, Chairman of the Board, International Shoe Company, 1501 Washington Avenue, St. Louis, Missouri.

DEAR MR. JOHNSON: Your letter of September 10th with enclosure as stated has been received, for which please accept my thanks. We will submit the figures only if our friend is interested in the purchase of the McElwain Branch, in which case we will ask him to keep them confidential.

I did not know of Mr. Rand's talk with Mr. Lee, who is now abroad, but if our friend is interested I suppose you could name a fixed price without much trouble.

I understood from you last June that it was the order of the Federal Trade Commission for your company to dispose of its McElwain Branch. Has anything changed this situation since our talk?

Very truly yours, Charles H. Schweppe.

CHS:S.

September 14, 1927.

Mr. Charles H. Schweppe, c/o Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: There has been no change in the order of the Federal Trade Commission. It is our opinion, [fol. 563] however, and that of our lawyers, that this order would not be sustained by the Courts, and while we are ready to dispose of the property on a fair basis it is without that conception that we have in any wise violated the law and that there was no intent on our part to do so when we acquired the McElwain Company.

I went over the matter of taking stock in a Company that might be organized to take over the McElwain interest, and you will remember I told you I did not think that under the order of the Court that we would be permitted to do so. The Attorneys in this case are rather of the opinion that we might take preferred stock. Certainly, however, not in an amount that would exercise control over the Com-

pany that might be organized to take over the McElwain interest; therefore, we are willing to consider any proposition that might contemplate our taking stock, provided, we can do so legally.

In view of the fact, that our sole reason for disposing of this property is to comply with the order of the Court of the Federal Trade Commission we would not want to do anything that might further complicate the matter.

We are ready to discuss details at any time that you might have a party who is responsible and interested.

Sincerely yours, Jackson Johnson, Chairman of the Board.

JJ:DM.

Lee, Higginson & Company

Chicago, September 21, 1927.

Mr. Jackson Johnson, Chairman of the Board, International Shoe Company, 1501 Washington Avenue, St. Louis, Missouri.

DEAR MR. JOHNSON: Replying to your letter of September 14th, which has not been answered before as I have been east, I am glad to know how you feel regarding the matter of taking stock in a company that might take over the McElwain interest. Of course you would accomplish nothing by selling the McElwain Company if you took enough stock in payment to control the company taking it over. I believe [fol. 564] our friends have in mind a fairly large company which they would expect to control.

I believe a certain amount of progress would be made if you would name a figure for which you would sell the McElwain Company. Our friends seem very interested in this important item. Last week in New York I understood one of the people interested might be in Chicago next month, and if I hear he is coming I will try to arrange a meeting with you.

With kind regards, and hoping you had a pleasant vacation at Harbor Point.

Sincerely yours, Charles A. Schweppe.

CHS. S.

September 22, 1927.

Mr. Charles H. Schweppe, c/o Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: Replying to your letter of the 21st of September in which you ask if we would name a price that we would be willing to dispose of the McElwain interest, this has not been considered in detail by officers of the Company and we would be compelled to go into a good many phases of the situation before we could arrive at what would be a fair price for the property.

In liquidating the old McElwain interest we had to take a large loss. If we undertake to liquidate the merchandise that we own, and now in the Branches, we should have to take another additional loss.

Just a question as to what the parties you have in mind want to buy before we could arrive at what would, in our opinion, be a fair price for it.

We have expended much energy and hard work trying to build up that Branch. This, however, we would not expect to get back if we sold it; nor could we possibly get what we paid for it under conditions of forced sale.

I will look into the matter and try and arrive at some [fol. 565] basis that, we feel, we might be able to offer it that would be attractive to a prospective buyer.

Sincerely yours, Jackson Johnson, Chairman of the Board.

JJ:DM.

September 23, 1927.

Mr. Jackson Johnson, Chairman of the Board, International Shoe Company, 1501 Washington Avenue, St. Louis, Missouri.

DEAR MR. JOHNSON: Replying to your letter of September 22nd, I think our friends would expect you to name a fairly low price for the McElwain Company if they were interested. If possible, I will let you know promptly just what they have in mind buying. I assume it will be plants and machinery, including practically everything except inventory.

Yours sincerely, Charles H. Schweppe.

CHS. S.

P. S.—I think if you would let me know your price, either for the plants alone or including inventory, it would be helpful to further the interest of our friends.—C. H. S.

September 26, 1927.

Mr. Charles H. Schweppe, c/o Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: Replying to your letter of the 23rd instant, it is not possible to make a price without knowing just what your client has in mind buying. If they want to buy the factories and equipment alone that would be quite different and we could make a price. If they want to buy the business as a going concern that would involve a great deal more to the Company and would necessarily alter our ideas as to what it should bring.

We are willing to make a price on either of the factories and equipments, or else on the entire business, but before doing so I would suggest that you have the party interested come to St. Louis and go into the matter in detail with us. I assume that should he decide to do so that you would come down with him.

[fol. 566] The matter has never been taken up in detail with our Board of Directors and, of course, before making an upset price that would be necessary. We wanted to defer taking this up with our Board until we had something tangible to go on.

Trusting to hear from you soon, I am,

Very sincerely, Jackson Johnson, Chairman of the Board.

JJ:DM.

Lee, Higginson & Company

Chicago, September 27, 1927.

Mr. Jackson Johnson, Chairman of the Board, International Shoe Company, 1501 Washington Street, St. Louis, Missouri.

DEAR MR. JOHNSON: Replying to your letter of September 26th, I will try to get just what our friends have in mind for the purpose of letting you know, so you will be in a position to name a price for the McElwain Company.

If they are coming to Chicago, as I heard last week while east, I will try to arrange for them to go to St. Louis with me, or, if they have not time to do that, I assume it will be agreeable for you, or one of your officers, to meet them in my office here.

Yours sincerely, Charles H. Schweppe.

CHS. S.

P. S.—I learned today that our friends would want to take over the McElwain Company as a going concern, and that they will be here some time in October, but cannot let me know now the exact date.—C. H. S.

September 29, 1927.

Mr. Charles H. Schweppe, c/o Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: In reply to your letter of the 27th instant, I will have a talk with some of our people here and see if we can arrive at any conclusion as a basis of price for the McElwain business.

There is another feature that enters into this proposition, and that is: what part of the transaction would be in cash [fol. 567] and how much stock the Company would be expected to take in payment for the assets for the McElwain Company.

These are details that should be considered before a final upset price could be named and I am quite of the opinion that a verbal discussion would be necessary before we could name a price for the property.

Sincerely yours, Jackson Johnson, Chairman of the Board.

JJ:DM.

Lee, Higginson & Company

Chicago, October 3, 1927.

Mr. Jackson Johnson, Chairman of the Board, International Shoe Company, 1501 Washington Avenue, St. Louis, Missouri.

DEAR MR. JOHNSON: Replying to your letter of September 29th, I agree with you that a meeting of the parties in-

terested in the purchase of the McElwain Company is desirable, and I will try to arrange this some time this month. Progress would be made if you could let me know beforehand what you would sell for cash the assets of the company as a going concern.

With kind regards, sincerely yours, Charles H. Schweppe.

CHS. S.

October 6, 1927.

Mr. Charles H. Schweppe, c/o Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: Replying to your letter of the 3rd in which you suggest naming a price for the McElwain assets, based on a cash sale, I have not discussed the price with my associates, feeling for a certain reason that it is better that I do not do so at this time. However, I have in mind that the Company would be willing to sell the McElwain assets at book value.

For your information, would say that the merchandise stock is turned about six times a year. I, therefore, feel that there is practically no shrinkage in the value of this stock. As indicated by the statement that I sent you, it [fol. 568] requires about $11,000,000.00 to operate the Company. This means that in addition to the fixed assets about $5,000,000.00 and if the Company was capitalized on this basis then it would not be necessary for it to borrow any money, or practically none. This is indicated by the annual interest that has been paid the International, which is based on 5%, and I think, if proper structure of capitalizing was made very good earnings could be shown on the Common Stock; quite a little more than the average on industrial.

I would be glad to go into the matter in detail with you at any time and, of course, want to say this is my idea as to price. I shall have to submit it to the Board before any final upset price could be agreed upon.

Sincerely yours, Jackson Johnson, Chairman of the Board.

JJ:DM.

Lee, Higginson & Company

Chicago, October 7, 1927.

Mr. Jackson Johnson, Chairman of the Board, International Shoe Company, 1501 Washington Avenue, St. Louis, Missouri.

DEAR MR. JOHNSON: Replying to your letter of October 6th, I am glad to have your personal opinion about the value of the McElwain Company assets. When I hear of the date our friends will be here I will let you know for the purpose of arranging a meeting, either in Chicago or St. Louis.

Sincerely yours, Charles H. Schweppe.

CHS:S.

October 12, 1927

Mr. Charles H. Schweppe, c/o Lee, Higginson & Co., 209 South La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: In reference to consultation with the parties who have expressed an interest in the McElwain Branch, in my opinion it would be much better if they could come to St. Louis, for the reason that we have here access to all the figures since the purchase of this Branch, and I [fol. 569] am quite sure that if the parties are interested they will have occasion to call for certain data, which we could not carry to Chicago; therefore, I hope if you make arrangements that you will try and have them come down to St. Louis, and advise me in advance of the time that you expect to be here.

Sincerely yours, Jackson Johnson, Chairman of the Board.

JJ:DM.

Lee, Higginson & Company

Chicago, October 13, 1927.

Mr. Jackson Johnson, Chairman, International Shoe Co., 1501-1509 Washington Avenue, St. Louis, Mo.

DEAR MR. JOHNSON: Replying to your letter of October 12th, I will try to arrange the meeting in St. Louis, and unless our friends are in a great hurry I think this will suit them.

Sincerely yours, Charles H. Schweppe.

CHS:CMC.

Lee, Higginson & Company

Chicago, November 5, 1927.

Mr. Jackson Johnson, Chairman of the Board, International Shoe Company, 1501 Washington Avenue, St. Louis, Missouri.

DEAR MR. JOHNSON: Our eastern friends interested in the McElwain Company did not get to Chicago last month. I understand they hope to be here sometime during the first week of December. As soon as I know the exact date I will communicate with you, and hope to arrange for them to meet you in St. Louis.

With kind regards,

Yours sincerely, Charles H. Schweppe.

CHS:S.

Lee, Higginson & Company

Chicago, December 20, 1927.

Mr. Jackson Johnson, Chairman of the Board, International Shoe Company, 1501 Washington Avenue, St. Louis, Missouri.

DEAR MR. JOHNSON: Last week, when in New York, I [fol. 570] heard that the friends who had shown an interest in the McElwain Company had decided that they would not make a bid for the company, as a result of which this can be called off as far — they are concerned. If I hear of any more friends who show an interest, I shall be glad to let you know.

Wishing you a Merry Christmas,

Yours sincerely, Charles H. Schweppe.

CAS:S.

December 22, 1927.

Mr. Charles H. Schweppe, c/o Lee, Higginson & Co., 209 S. La Salle St., Chicago, Illinois.

DEAR MR. SCHWEPPE: I regret to learn that the parties whom you have been negotiating with have finally declined to make an offer for the assets of the McElwain Branch.

If you can find any one else who might be interested I should be very glad to consider anything like a fair offer for the assets.

Sincerely yours, Jackson Johnson, Chairman of the Board.

JJ:DM.

COMMISSION'S EXHIBIT No. 1.

May 24, 1921.

To the First Preferred Stockholders of W. H. McElwain Company:

Your Company has suffered a severe setback during the last few months, owing to a cessation of buying, an unparalled wave of cancellations and an unprecedented slump in leather values.

In the Spring of 1920 our total factory capacity was oversold twenty-five per cent to December 1, 1920. To cover these sales we protected ourselves by the purchase of hides only to the extent that seemed prudent.

But beginning in August cancellations and returns began to come in until within a comparatively short time they amounted to over $7,000,000. New orders also became practically unobtainable. Meanwhile our merchandise on hand consisting of manufactured shoes awaiting delivery dates, merchandise in process in our shoe factories and tanneries [fol. 571] and raw hides dropped in value day by day. Sole leather hides fell to one-fourth of their previous value and upper leather hides to one-third of their value as of July 1st.

We have just taken within the fortnight a special interim inventory reducing all raw, in-process and finished merchandise to sound value as of today. We find losses for the current year of $6,472,000. We also find that due to these inventory losses and factory losses, to the payment to the Government of $1,000,000 in Income and Excess Profits Taxes, additions to plant, retirement of preferred stock, dividends paid during earlier months of the year, and several other similar items, our working quick capital has been seriously reduced.

While our banks have not yet restricted our credits, we realize that it is not the function of the banks to supply permanent working capital and that the duty and necessity has rested upon us to reduce our bank loans as rapidly as possible until they come within the compass of our reduced resources.

But with the liquidation completed it became clear that our restricted working capital and our reduced bank accommodations held out no practical opportunity to operate our factories or to conduct our business on a sufficient scale to afford reasonable expectation of profit.

Under these conditions we discontinued dividend payments on our Common and Second Preferred Shares. We are now faced with the necessity of eliminating dividend payments on our First Preferred Shares for an indefinite period.

In these circumstances your officers and directors have studied various plans of securing additional capital, all of which have been carefully weighed and analyzed with Messrs. Lee, Higginson & Co., and in conference with our banks.

We have reached the conclusion that the best service we can render to the First Preferred Stockholders of the Company is to submit to them an offer for the purchase of their stock by the International Shoe Company, of St. Louis, at $82.50 per share, payment to be made by the International Shoe Company either (1) wholly in its preferred 8% Stock, [fol. 572] valued at $109 per share; or (2) not to exceed 50% of the purchase price in its Common Stock, valued at $30 per share and the balance in its 8% Preferred Stock, valued at $109 per share; or (3) wholly in International Preferred Stock, as in Option 1, with an agreement whereby certain individuals (Directors of International Shoe Company) agree to buy, and the depositor of McElwain First Preferred Stock agrees to sell for cash at $109 per share the International Preferred Stock to which he is entitled, payable at least one-half before July 1, 1922, and the balance on or before July 1, 1923. Details of the terms of the offer are more particularly described below. The above prices of $109 and $30 respectively represent present market quotations in St. Louis for International Shoe Company Preferred and Common Stocks.

We have had friendly relations with the International Shoe Company for years. We have the highest opinion of the ability and the high character of the management of that company. Their business has been predominantly in the west and south; ours predominantly in the east. They have sought primarily to distribute their products in the great agricultural and mining districts of the country; we enjoy a large business from retailers in large cities. Separately there has been little conflict in our respective fields of activity; we compete only on the fringe. The amalgamation of the interests of the two companies, therefore, brings immediately to the new organization a nation-wide and well balanced distribution of its products. Both companies have followed similar ideals of large scale production, continuous operation of plants in a seasonal industry, and low cost distribution; in short, both have attempted to place in the hands of the American people a well made product at the lowest possible cost.

The International Shoe Company have not been willing to make an offer to purchase outright the assets of our Company, but they have said that if they could maintain the continuity and the good will and the management of our Company, which they felt could be assured only by the purchase of each of our three classes of stock, they would be willing to do so, but upon no other basis would they consider an amalgamation of the interests of the two com-
[fol. 573] panies. Besides the offer to pay $82.50 per share for the First Preferred Stock, as outlined above, they have offered to buy our Second Preferred Stock at 75 ($37.50 per share) paying therefor in their Common Stock at $30 per share or in their Preferred Stock at $109 per share, and also to buy our Common Stock at 50 ($25 per share) by paying therefor one share of International Shoe Company Common Stock valued at $30 for each 1 1-5 shares of our Common Stock.

With confidence in the soundness of our conclusion we transmit to you as stockholders of the McElwain Company the following propsals of the International Shoe Company for the exchange of your shares:

Option 1: International Preferred Option.—To exchange your stock for International Shoe Company 8% Preferred Stock on the basis of three-quarters of 1 share of Inter-

national Shoe Company Preferred, and 75 cents in cash, for 1 share of McElwain First Preferred.

Option 2: International Common and Preferred Option. —To exchange (1) not exceeding one-half of your stock for International Shoe Company Common Stock (without par value) on the basis of 2¾ shares of International Shoe Company Common for 1 share of McElwain First Preferred, and (2) to exchange the remainder of your stock for International Shoe Company Preferred Stock on the basis above specified in Option 1.

No fractional shares of International Shoe Company stock will be issued, but arrangements have been made for the benefit of the holders of McElwain First Preferred Stock whereby the Old Colony Trust Company will be authorized to adjust fractional rights to International Shoe Company Stock by buying or selling, at the holder's option, on the basis of $109 per share for the International Shoe Company Preferred Stock and $30 for the Common Stock.

Option 3: Sale Option.—To deposit your stock with the Old Colony Trust Company, of Boston, as Trustee under an agreement whereby certain individuals (Directors of International Shoe Company) agree to buy, and the de- [fol. 574] positor agrees to sell, for cash at $109 per share the preferred stock of International Shoe Company to which such depositor would have been entitled had he elected to exchange his stock under the terms of Option 1. This Option is not open to a stockholder who accepts Option 2. This Option must be exercised at the time of deposit. Said agreement provides for payment on or before July 1, 1922, of one-half of the purchase price and for payment in full on or before July 1, 1923. In the meantime the International Shoe Company Preferred Stock received in exchange is to be held by Old Colony Trust Company in trust. Depositors will receive transferable trust receipts. All dividends on the International Shoe Company Preferred Stock represented by trust receipts will be collected by the Trustee and paid to the holders of trust receipts representing said stock. Deposits of stock under this Option 3 must be made on or before November 1, 1921.

A copy of the deposit agreement may be obtained from the Old Colony Trust Company, Boston.

A form for use in making exchanges and deposits is enclosed.

As no adjustment of dividends on the stock of either company is to be made, it is important to make exchanges and deposits promptly, if possible before the record-date for payment of International Shoe Company dividends.

W. H. McElwain Company. J. Franklin McElwain, President.

May 24, 1921.

Messrs. Lee, Higginson & Co., Boston, Mass.

GENTLEMEN: In working out the plan for the purchase by International Shoe Company of the capital stock of W. H. McElwain Company, the International Shoe Company attempted to arrive at a fair and equitable price to be paid for each of the three classes of stock. When we reached the conclusion on which our definite offer was made we had clearly in mind that the McElwain Company's value to the International rested on its uninterrupted opera- [fol. 575] tion under the present management, and we were, therefore, unwilling to entertain any proposals which did not include the holders of McElwain Second Preferred and Common Stocks.

The International Shoe Company (recently reincorporated in Delaware) was formed in December, 1911, as a consolidation of the Peters Shoe Company and the Roberts, Johnson & Rand Shoe Company, both of St. Louis. The Peters Shoe Company was organized in 1895 with a capital of $250,000. Roberts, Johnson & Rand Shoe Company was organized and began operations in 1898 with a capital of $250,000.

For two or three years neither company manufactured shoes, but they confined their operations wholly to jobbing shoes purchased in New England. About 1900 each company began in a small way the manufacture of welt shoes. During the next eleven years the rapid and healthy growth of shoe manufacturing in St. Louis enabled the companies to build up a volume of annual sales which aggregated about $20,000,000. During the gradual development of sales, the capital investment of the companies was yearly increased wholly from the earnings of the companies.

At December, 1911, the combined net tangible assets of the companies amounted to $8,250,000, which made up the initial capital investment of the International Shoe Company.

From the formation of each of these two companies up to December, 1911 (when the International Shoe Company was organized), the combined average yearly earnings were slightly in excess of 30% on the invested capital.

From December, 1911, to November 30, 1920, the International Shoe Company has conserved its resources by paying uniform dividends and passing each year a substantial amount to the surplus account. The natural result of this policy was constantly to increase our capital investment, strengthen our finances and decrease overhead charges.

Under these favorable conditions created largely by the company's conservative and sound policy we have shown through the last nine years average yearly net earnings of 30¼% on our capital investment.

[fol. 576] Through good years and bad our earnings have been uninterrupted. We have striven to sell to approximately 40,000 merchants a constantly increasing volume of shoes, constructed of solid leather throughout, on a close margin of profit—looking always to volume for profit and with an assurance that permanent progress can be maintained only by merit.

It is gratifying to the officers of the International Shoe Company that the first five months of this fiscal year give evidence of another successful run. The earnings of our company for the first part of 1921 show net earnings at a rate in excess of $800,000 per month. This is the more encouraging because our shoes are being manufactured and distributed at prices below the competitive market, thus creating a widening circle of goodwill for the company's products.

In our new association with the McElwain Company our interest is very definitely and permanently fixed in New England. With a constant watchfulness of the Company's welfare, we are anxious that all the stockholders of the McElwain Company join with us in making the new and larger International Shoe Company an institution of national strength—to be operated along lines of sincere service to

the public and at the same time profitable to its stockholders.

Yours truly, International Shoe Company. Frank C. Rand, President.

International Shoe Company is a Delaware Corporation. It is one of the oldest, largest and most prosperous manufacturers of shoes in the United States, owns and operates 32 shoe factories in Illinois, Missouri and Kentucky, with a total capacity of 70,000 pairs of shoes per day. Its gross sales in the last fiscal year exceeded $75,000,000. The acquisition of the W. H. McElwain Company with its 10 shoe factories will increase the capacity to 110,000 pairs per day. Combined gross sales of the two companies in their last fiscal year ending in 1920 exceeded $125,000,000, sold to about 70,000 customers.

[fol. 577] Condensed Consolidated Balance Sheet, April 30, 1921, of International Shoe Co. and W. H. McElwain Co.

Assets			Liabilities	
Current and Working Assets:			Notes Payable	$15,318,000
Cash		$6,255,741	Accounts Payable	3,677,904
Bankers' Acceptances		4,446,716	Reserve for Federal Taxes	2,347,280
U. S. Government Bonds		112,772	Reserve for Dividends on Int. Shoe Co. Pref.	612,500
Accounts and Notes Receivable (Notes $409,672)		20,267,256		
Inventories		20,926,686	Total Liabilities	$21,955,684
		$52,009,171		
Plant Account	$14,559,606			
Less Depreciation	5,566,308			
		8,993,298		
Investments in Securities of Other Companies		565,353		
Prepaid Expenses and Miscellaneous Assets		868,008	Excess of Assets over Liabilities, represented by Capital Stock	40,480,146
Total Assets (Exclusive of Goodwill)		$62,435,830		$62,435,830

[fol. 578]

Earnings Last Five Fiscal Years

(International—Year Ended November 30; McElwain—May 31)

International

Fiscal year	Sales	Profits before Federal taxes	Profits after Fed. taxes applicable to dividends	Dividends on capital stock	Surplus profits invested in the business
1916	$33,574,914	$4,110,257	$4,110,257	$1,552,250	$2,558,007
1917	45,037,293	5,353,980	4,083,980	1,589,625	2,494,355
1918	50,810,947	4,397,880	2,812,880	1,720,000	1,092,880
1919	61,247,782	6,917,224	4,667,224	1,592,500	3,074,724
1920	75,617,895	8,914,491	6,270,234	1,866,250	4,403,984
Totals 5 Years	$266,288,831	$29,693,832	$21,944,575	$8,320,625	$13,623,950
Average per Year	53,257,766	5,938,766	4,388,915	1,664,125	2,724,790

McElwain

1916	$24,344,730	$776,709	$776,709	$528,000	$248,709
1917	28,140,984	1,751,616	1,751,616	702,750	1,048,866
1918	35,552,691	1,091,604	967,211	603,000	364,211
1919	37,103,823	1,404,435	976,551	612,000	364,551
1920	49,454,580	3,388,715	2,448,715	1,018,375	1,430,340
Totals 5 Years	$174,596,808	$8,413,079	$6,920,802	$3,464,125	$3,456,677
Average per Year	34,919,361	1,682.615	1,384,160	692.825	691.335

[fol. 579]

Combined Earnings

Fiscal years	Sales	Profits before Federal taxes	Profits after Federal taxes applicable to dividends
1916	$57,919,644	$4,886,966	$4,886,966
1917	73,178,277	7,105,596	5,835,596
1918	86,363,638	5,489,484	3,780,091
1919	98,351,605	8,321,659	5,643,775
1920	125,072,475	12,303,206	8,718,949
Totals 5 Yrs.	$440,885,639	$38,106,911	$28,865,377
Average per Yr	88,177,127	7,621,382	5,773,075

[fol. 580] Net profits of the International Shoe Company for 5 months ended April 30, 1921 (before Federal Taxes), were $4,274,939, an average of over $800,000 per month, the largest earnings in the Company's history. The losses by the McElwain Company since May 31, 1920, are stated and explained in the foregoing letter of Mr. McElwain.

The above figures are upon a thoroughly conservative basis. Assets include no valuation of good will. Inventories have been written down to present market value or lower. Plants costing $14,559,000 are carried at only $8,994,000. The computation of earnings is after deducting Federal Taxes and liberal allowances for depreciation.

Assets and Earnings per Share of Stock

International Shoe Company now has outstanding $12,250,000 Preferred Stock and 765,000 shares of Common Stock without par value. The McElwain Company has outstanding $6,998,100 First Preferred, $2,600,000 Second Preferred and $3,494,800 Common.

The amount of Preferred and Common Stock which International Shoe Company will have outstanding at the completion of exchange of McElwain stock will depend upon the options exercised by McElwain shareholders.

On the assumption that McElwain Preferred shareholders having such an option all elect Preferred Shares in International Shoe Company:

(a) The combined balance sheet of International Shoe Company will show $19,335,600 of Preferred Stock and 823,246 shares of Common Stock;

(b) The combined balance sheet will show net current assets of $155 per share of Preferred outstanding and total net assets of $209 per share of Preferred;

(c) The combined balance sheet will show over $13 of net current assets and over $25 of total net assets per share of Common Stock outstanding;

(d) The combined average annual earnings for the last five years, as above, will show 29.8 per cent on the Preferred Stock, and $5.13 per share on the Common Stock.

[fol. 581] On the assumption that McElwain Preferred shareholders all elect Common Stock of International Shoe Company to the extent allowed them in their options:

(a) The combined balance sheet of International Shoe Company will show $14,898,300 of Preferred Stock, and 1,004,881 shares of Common Stock outstanding;

(b) The combined balance sheet will show net current assets of $201 per share of Preferred outstanding, and total net assets of $271 per share of Preferred;

(c) The combined balance sheet will show net current assets of $15, and total net assets of $25 per share of Common Stock outstanding;

(d) The combined average annual earnings for the last five years, as above, will show 38.7 per cent on the Preferred Stock, and $4.55 per share on the Common Stock.

The foregoing statements of assets and earnings have been compiled from official sources. The accounts of both Companies have been regularly audited by Certified Public Accountants, the International by Marwick, Mitchell & Co. and the McElwain by Harvey S. Chase and Co.

Dividends

The International Shoe Company has paid dividends continuously on its Preferred and Common Stocks since 1911. The present rate of Common dividend is $2 a year. Earnings of the International Shoe Co. alone, for the last 17 months were sufficient to pay this dividend and add about $3 per share per year to the asset value of this stock.

During the last five years and five months to April 30, 1921, International Shoe Company earned net profits of $26,219,514, out of which it has paid Preferred and Common dividends aggregating $9,876,875, leaving $16,342,639 profits invested in the business.

Description of the Preferred Stock

The Preferred Stock has a par value of $100 per share. Among the preferences and limitations which apply to it [fol. 582] is more fully set forth in the Certificate of Incorporation, are the following, in substance:

Preferred as to 8% Cumulative Dividends payable 1% quarterly on the first days of January, April, July and October and ½% on the first days of February, March,

May, June, August, September, November and December.

Preferred as to Assets.—Callable as a whole or in part on any dividend date on or after January 1, 1923, on 60 days' notice, at $115 per share and accrued unpaid dividends. In the event of sale of all the assets of the Company, entitled to $110 per share and accrued unpaid dividends. Except as above stated, in the event of any liquidation, merger, dissolution or winding up of the corporation, entitled to $100 per share and accrued unpaid dividends.

Voting Power.—The Preferred Stock has equal voting power with Common Stock, share for share.

Common Dividends Restricted.—While any of the Preferred Stock is outstanding no dividends shall be paid on the Common Stock unless, after such payment, the net quick assets of the Company shall equal at least 125 per cent of the par value of Preferred Stock outstanding.

No Subscription Rights.—No holder of stock of any class shall have any preferential or preemptive right to subscribe for additional Stock of any class or for any obligations convertible into Stock, other than such subscription rights, if any, as the Board of Directors may, in their discretion, determine to offer.

The statements contained in this circular, while not guaranteed, are based upon information and advice which we believe accurate and reliable.

(Here follows Exhibit 2, side folio page 583)

[fol. 584] COMMISSION'S EXHIBIT No. 3

Minutes of June 19, 1923

Mr. Rand further informed the meeting of the complaint filed by the Federal Trade Commission against the company in which it is alleged that the acquisition by this company of the capital stock of W. H. McElwain Company was in violation of the Clayton Act. Our counsel having

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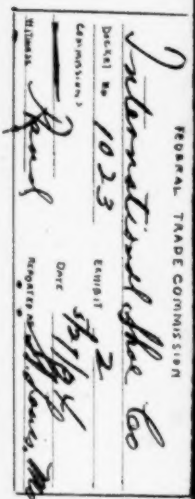

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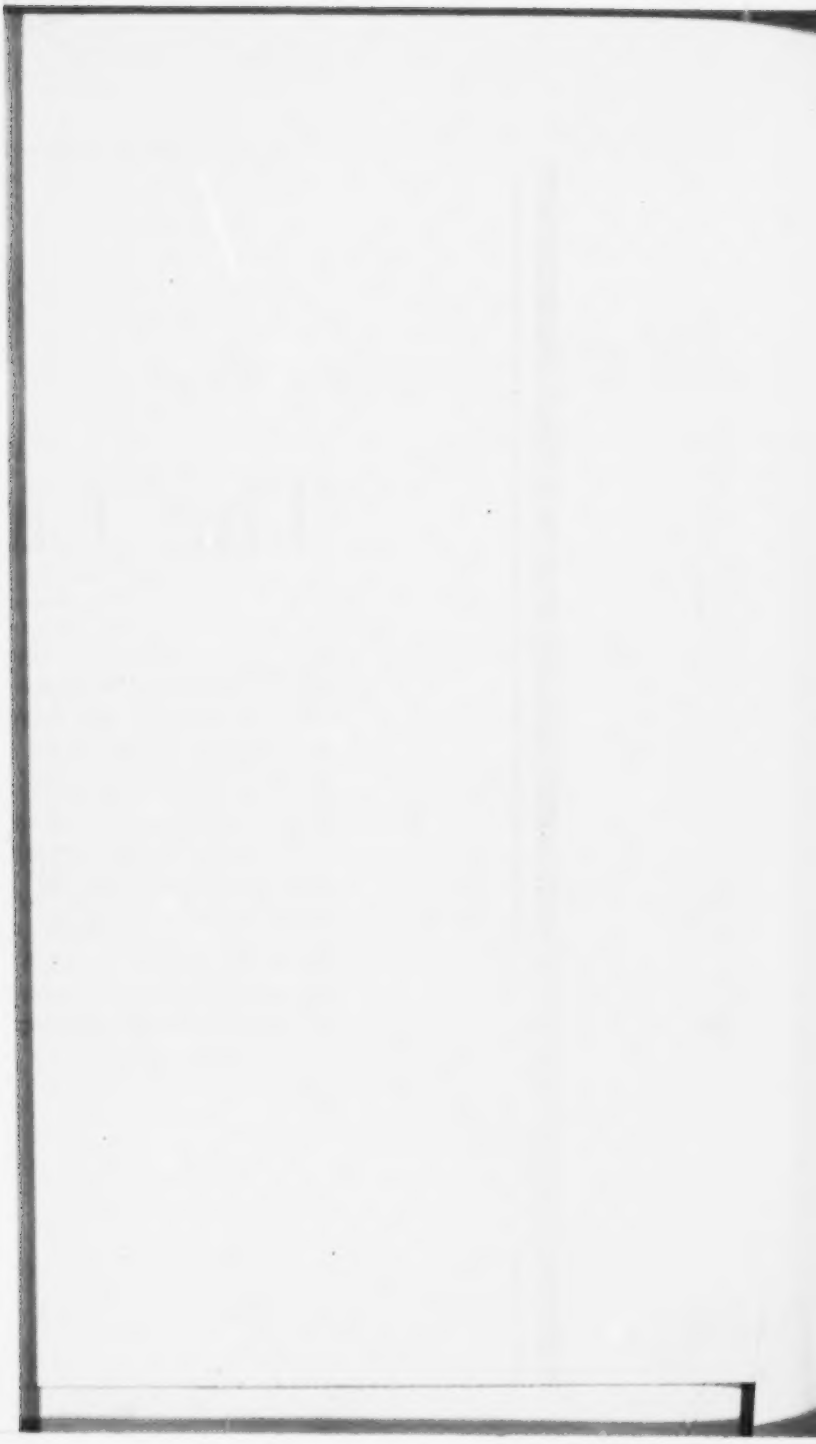


advised that there was a possible technical violation of the Clayton Act in so acquiring and holding the capital stock of W. H. McElwain Company, whereas on the other hand this company could have lawfully acquired the properties of W. H. McElwain Company by a purchase thereof, and it being the opinion of our counsel that the company can comply with the law as set forth in the Clayton Act by divesting itself of its stock holdings in the W. H. McElwain Company; and Mr. Rand having reported to the meeting that the company has an offer from Bennett, Letd., of Chambly Canton, P. Q., Canada, to buy 69,346 shares of the First Preferred stock and 491 shares of the Common stock of W. H. McElwain Company, now owned by this company.

Upon motion made by Mr. Moulton, duly seconded and unanimously carried, it was

Resolved, that Mr. Stanley King, our Boston representative be and is hereby authorized to accept the offer of Bennett Ltd., to buy 69,346 shares of First Preferred stock and 491 shares of Common stock of W. H. McElwain Company for the sum of $4,063,125.89 cash; that he be authorized to take the necessary steps to consummate the sale and delivery of the shares of Bennett Ltd.; and that the individuals, in whose names the stock is now held be and they are hereby authorized and directed to execute the proper transfers of said stock.

COMMISSION'S EXHIBIT No. 4

This Agreement Entered into this 20th day of June, 1923 by and between W. H. McElwain Company, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter for brevity referred [fol. 585] to as Grantor, and International Shoe Company, a corporation duly organized and existing under the laws of the State of Delaware hereinafter for brevity referred to as the Grantee, Witnesseth:

For and in consideration of the sum of $4,063,125.89 paid by the Grantee to the Grantor, receipt whereof is hereby acknowledged, the Grantor does hereby sell, convey and assign to Grantee all of the properties and assets of

Grantor of any and all descriptions, real, personal and mixed, tangible and intangible, whether carried upon the books of Grantor as valuable assets or otherwise.

Grantor agrees to execute and deliver to Grantee as speedily as may be possible all necessary warranty deeds, conveyances, assignments and transfers covering the properties hereby sold as may be necessary to transfer the properties and vest the title thereto in Grantee.

Grantor further agrees that all contracts, leases, subleases, privileges, licenses, exemptions and other things or benefits now vested in and enjoyed by it but which in their nature are not assignable or which for any reason cannot be immediately assigned or to which a third party may refuse consent to assignment, will be held by it in trust for Grantee to be managed and disposed of subject to the control and direction of Grantee.

Such claims and demands as now exist or may hereafter arise, whether now in litigation or hereafter to be litigated shall be prosecuted in the name of the Grantor but for the benefit and at the expense of Grantee.

Grantor further agrees that at the time of dissolution of W. H. McElwain Company or as soon thereafter as may be lawful the sole right to the use of the firm name W. H. McElwain Company shall be conveyed to and vest in Grantee.

Grantor agrees to assume and to pay any and all lawful accounts, claims and demands that now exist or that they may arise against the Grantor, when the same may become due and payable.

It is further agreed that the liquidation of the affairs of the Grantor shall be handled by its present officers until July 31st, 1923, the Grantee affording, without cost to Grantor, such assistance, information and services as may [fol. 586] be requested by Grantor or its officers. Grantee, as a further consideration herein, agrees that on and after August 1st, 1923 it will assume the responsibility for the further liquidation of the affairs of Grantor and will administer the same without cost to Grantor.

Grantor having furnished Grantee with waivers from a sufficient number of its creditors under the several Bulk Sales Laws mentioned in Grantee's offer to buy, dated June 4th, 1923, further obligation of Grantor under that section of the said offer is hereby waived by Grantee.

In Witness Whereof, the parties hereto have caused these presents to be signed in their corporate names by their authorized officers, the day and year first above written.

W. H. McElwain Company, by Clifford P. Warren, President. Attest: C. S. Howland. International Shoe Company, by F. C. Rand, President. Attest: F. A. Sudholt, Secretary.

COMMISSION'S EXHIBIT No. 5

Minutes of June 19, 1923

It having been explained to the meeting that, because of the financial condition of W. H. McElwain Company, the Common stock and the Second Preferred stock of that company which is now held by this company is of no value, and the company having been advised by its counsel that the surrender for cancellation and extinguishment of a portion of this stock would simplify our efforts to comply with the Clayton Act:

Upon motion by Mr. Horton Watkins, duly seconded and unanimously carried, it was

Resolved, that this company donate and surrender to W. H. McElwain Company the 52,000 shares of Second Preferred Stock and 69,346 shares of the Common stock of W. H. McElwain Company, which are now owned by or held for this company, upon the condition that they be retired, canceled and extinguished; and that the persons in whose names these shares are now held be and are hereby [fol. 587] authorized and directed to execute the proper endorsements and to make delivery of the certificates to the proper officers of W. H. McElwain Company.

COMMISSION'S EXHIBIT No. 6

June 12, 1923.

Upon motion by Mr. Moulton, duly seconded and unanimously carried, the following resolution was adopted:

Resolved that the action of Mr. Frank C. Rand, President, in making the following offers to W. H. McElwain

Company for its properties, be and the same is hereby ratified and confirmed. Said offers made in the alternative are as follows:

"June 4th, 1923.

"W. H. McElwain Company, Boston, Mass.

GENTLEMEN: We offer to buy from you all your properties and assets, real, personal and mixed, tangible or intangible, of any and all descriptions, whether carried on your books as valuable assets or otherwise, upon the basis outlined hereinafter. This offer to buy shall be open for your acceptance until 12 o'clock noon Eastern time on Wednesday, June 13th, 1923.

We offer to pay to you in cash the sum of $4,063,125.89 for the aforesaid properties and in consideration of the terms and conditions hereinafter set forth.

The sum of $4,063,125.89 is arrived at by taking the total net values of your properties and assets as shown by your books and by an audit thereof made by Marwick, Mitchell & Company as of April 30th, 1923 ($2,563,125.89) and adding thereto the sum of $1,500,000.00.

As a further consideration for said properties and assets we will agree to act as trustees in liquidation for you and in your behalf administer the liquidation of all lawful accounts, claims and demands of any and all natures which may exist or which may arise against your company.

We will further agree to assume and to pay any and all lawful accounts, claims and demands that now exist or [fol. 588] which may arise against your company when the same may become due and payable.

Upon acceptance you will agree to make such warranty deeds, conveyances, bills of sale, assignments and transfers covering the properties to be sold as may be necessary to transfer title to us; also that such contracts, privileges, licenses, exemptions and other things or benefits now vested in or enjoyed by you but which in their nature are not assignable or which for any reason cannot be assigned immediately, will be held in trust by you for our benefit and you will hereafter manage and dispose of the same subject to our control and direction.

Such claims and demands as you may have against others, whether now in litigation or hereafter litigated shall be

prosecuted in your name, for our benefit. We will agree to assume all expense which may accrue on account of such litigation.

You will further agree to sell to us for the sum of $1.00 at any time the W. H. McElwain Company may be dissolved or as soon thereafter as is lawful, the sole right to use the name W. H. McElwain Company.

You agree to give to us a statement under oath, showing the names and addresses of all your creditors on the date of your acceptance of this offer, together with the amount due each and the date when due, and will also deliver to us written waivers made by substantially all of your creditors of their rights under the Bulk Sales laws of the States of Massachusetts, New Hampshire, Vermont, New York, Ohio, Illinois, California and Missouri, and the Republic of Argentine.

Transfer of title of all the properties as aforesaid and payment therefor shall be made on or before July 2d, 1923, provided that if it is impossible for you to make such transfer of title on or before July 2d, 1923, a reasonable extension of time will be granted by us.

If your stockholders accept this offer, we shall require a certified copy of the minutes of the stockholders meeting in which the acceptance is made and certified copies of the minutes of your directors meeting or meetings in which the various transfers, conveyances, etc., are approved.
[fol. 589] If your stockholders accept this offer, immediately thereupon you will notify us thereof and we will embody the pertinent terms and conditions of this letter into the form of a contract for purchase and sale to be executed by your and our proper officers.

Yours truly, International Shoe Company, by F. C. Rand, President."

"June 4, 1923.

"W. H. McElwain Company, Boston, Massachusetts.

GENTLEMEN: We offer to buy from you all your properties and assets, real, personal and mixed, tangible or intangible, of any and all descriptions, whether carried on your books as valuable assets or otherwise, upon the basis outlined hereinafter. This offer to buy shall be open for

your acceptance until 12 o'clock noon Eastern time on Wednesday, June 13, 1923.

We offer to pay to you in cash the sum of $16,537,821.91 for the aforesaid properties and in condition of the terms and conditions hereinafter set forth.

The sum of $16,537,821.91 is arrived at by taking the values of your properties as shown by your books and by an audit thereof made by Marwick, Mitchell & Company, as of April 30, 1923 ($15,038,821.91) and adding thereto the sum of $1,500,000.00.

The offer is upon the condition that you agree that we shall assume none of your liabilities, that you will liquidate all your liabilities in your own way and without cost to us, that the properties sold to us shall be free from all encumbrances, liens, etc., except such mortgages, rights of way, easements or the like as may exist of record or as may be hereafter specifically assumed by us.

Upon acceptance you will agree to make such warranty deeds, conveyances, bills of sale, assignments and transfers covering the properties to be sold as may be necessary to transfer title to us; also that such contracts, privileges, licenses, exemptions and other things or benefits now vested in or enjoyed by you but which in their nature are not assignable or which for any reason cannot be assigned im- [fol. 590] mediately, will be held in trust by you for our benefit and you will hereafter manage and dispose of the same subject to our control and direction.

Such claims and demands as you may have against others, whether now in litigation or hereafter litigated shall be prosecuted in your name, for our benefit. We will agree to assume all expenses which may accrue on account of such litigation.

You will further agree to sell to us for the sum of $1.00 at any time the W. H. McElwain Company may be dissolved or as soon thereafter as is lawful, the sole right to use the name W. H. McElwain Company.

You agree to give to us a statement under oath, showing the names and addresses of all your creditors on the date of your acceptance of this offer, together with the amount due each and the date when due, and will also deliver to us written waivers made by substantially all of your creditors of their rights under the Bulk Sales laws of the states

of Massachusetts, New Hampshire, Vermont, New York, Ohio, Illinois, California and Missouri, and the Republic of Argentine.

You will agree to hold us harmless and indemnified from any and all liability on account of any direct or contingent obligations of yours, arising on account of any business, transactions, affair, incident, or condition existing or transpiring in, or during the operation of, the various plants and properties before the date of transfer of the properties to us, whether such obligations may be due at the date of transfer of title or may accrue thereafter.

We will agree to hold you harmless and indemnified from any and all liability on account of any direct or contingent obligations of ours, arising on account of any business, transaction, affair, incident, or condition existing or transpiring in, or during the operation of, the various plants and properties after the date of transfer of the properties to us, including all liability on account of any business done or condition existing under any contracts or agreements which are assigned by you to us, or performed by you for us after the date of transfer of title.

Transfer of title of all the properties as aforesaid and [fol. 591] payment therefor shall be made on or before July 2, 1923, provided that if it is impossible for you to make such transfer of title on or before July 2, 1923, a reasonable extension of time will be granted by us.

If your stockholders accept this offer, we shall require a certified copy of the minutes of the stockholders meeting in which the acceptance is made and certified copies of the minutes of your directors meeting or meetings in which the various transfers, conveyances, etc., are approved.

If your stockholders accept this offer, immediately thereupon you will notify us thereof and we will embody the pertinent terms and conditions of this letter into the form of a contract for purchase and sale to be executed by your and our proper officers.

Yours truly, International Shoe Company, by F. C. Rand, President.

And resolved further that the action of Mr. Rand in extending the time for acceptance of said offer to June 22nd, 1923, be and the same is hereby confirmed and ratified.

COMMISSION'S EXHIBIT No. 7

May 17, 1921.

In discussing the merger of the W. H. McElwain Company of Boston with the International Shoe Company, F. C. Rand, President of the International, made the following statement:

"For more than three years we have not been able to make as many shoes as our customers wished to buy from us. Our sales have grown more rapidly than our manufacturing capacity and our customers therefore have not received as prompt shipment and as good service as we desire to give them.

"Throughout the dull period of the past six months, the International Shoe Company has not closed down a factory and is now producing more pairs of shoes a day than at any other time in its history. This continuity of operation is beneficial to our employees and their appreciation is reflected in the quality of work they are turning out. Although we have increased our manufacturing by building one or two, and sometimes three factories a year since 1914, [fol. 592] our production has not kept up with the increasing business that has come to the Company.

"In our association with the W. H. McElwain Company, we will be strengthened by a group of most efficient shoe manufacturers, who are now and have been for a number of years the largest producers of shoes in New England in their particular field of shoemaking. The officers and directors of the W. H. McElwain Company are young, active and aggressive and are men of high business character and ideals. The development of their business to a point far in excess of any other New England shoe manufacture is evidence of the character of their merchandise—a thing which has appealed strongly to us. About 65% of their production has been sold in New York, Pennsylvania and in the North Atlantic Coast States, including New England. They have also enjoyed a large business from retailers in large cities. This latter field has not heretofere been developed to a large extent by the International Shoe Company because its production has been absorbed in other fields. The consolidation of the two companies, therefore,

brings immediately to the new organization a nation-wide and well balanced distribution of its product.

"The W. H. McElwain Company has at present a factory capacity of 40,000 pairs of shoes per day, made in ten highly specialized modern factories. Along with these shoe factories, sole leather and upper leather tanneries are owned and operated. With this added strength, the International Shoe Company is prepared to produce 120,000 pairs of shoes daily and at the same time the several tanneries of the Company will be producing leather in quantities second only to one other tannery in America.

"The combined volume of shoe business done by the W. H. McElwain Company and the International Shoe Company aggregated $128,000,000.00 during 1920; and yet under our highly developed system of manufacture, this great volume of production is not inconsistent with refinement of style and finish of our shoes.

"One of the strongest reasons for bringing about this consolidation is the firm belief that standardization of methods, large production and the tanning of raw material [fol. 593] from which our shoes are constructed, will enable the new Company to effect economies in production, improve the quality and lessen the cost of distribution. If these results can be accomplished, and I believe they will, we can sell to our retailers better shoes at less money and in this way encourage the distribution of shoes to the consumer at low prices, for our merchandise will be handled under the most modern and efficient system of production and distribution.

"We are looking forward with an abiding faith in the healthy growth of the St. Louis shoe industry and we hope that we may attract to St. Louis the favorable attention of the consuming public by rendering the right kind of service at the right time and at the right prices."

COMMISSION'S EXHIBIT No. 8

W. H. McElwain Company, Makers of Shoes, 590 Atlantic Ave., Boston. 8

June 20, 1923.

Mr. F. C. Rand, Pres. International Shoe Co., 1501 Washington Ave., St. Louis, Mo.

DEAR MR. RAND: The McElwain stockholders' meeting was held this morning at ten o'clock and passed off in accordance with schedule. No outside stockholders were present.

Detailed papers of transfer are now being executed and passed. And tomorrow in New York the financial aspects of the transaction will be completed at the Bank of Commerce.

I am now negotiating with Mr. Wigglesworth's lawyer and if we can agree on a reasonable price, I shall buy him off rather than permit him to bring court proceedings. Although he did attend the stockholders' meeting and vote no, he has the right to bring a bill in equity asking for an appraisal of the assets which were sold to International. Of course we do not object to this, but the expense of fighting the case would probably be about as much as it will cost to buy him off.

Yours very truly, Stanley King.

[fol. 594] COMMISSION'S EXHIBIT No. 9

Commission's Exhibit 9 was reported missing by the official reporters, at the time the other exhibits were forwarded.

The copy attached below does not bear the reporter's stamp, but with that exception, Attorney Brindley advises, it is a duplicate of the paper received in evidence as Commission's Exhibit 9, Docket 1023.

[Copy]

(Initialed:) J. E. R. S. E. W.

$4,000,000.00. New York, June 21, 1923.

The undersigned hereby applies to National Bank of Commerce in New York for a loan to the undersigned of Four Million Dollars ($4,000,000.00) to be credited to the undersigned's account, which will be received by us as a trust fund.

It is expressly agreed that all stocks, bonds or other securities, or the proceeds thereof, purchased or paid for by the undersigned with, or which may come into possession or control of the undersigned out of the avails of, said loan shall be by the undersigned, or the undersigned's agent or representative, held in trust for and deposited with National Bank of Commerce in New York (hereinafter termed the Bank) it being the intention and agreement of the undersigned to pledge and deposit with the Bank and to subject to the lien and control of the Bank as such pledgee the securities or moneys so acquired, as collateral to said loan and to any other obligation or indebtedness of the undersigned to the Bank; and it is further agreed that the Bank shall have a lien upon all property of the undersigned and all collaterals pledged by the undersigned, now or hereafter in possession of the Bank, or under its control, as security for any indebtedness of the undersigned now existing or to become due or that may be hereafter contracted, with the right at any time to demand additional security and with the right, in case of failure to comply with such demand for additional security or in case of default in payment, to sell without advertisement or notice to the undersigned, [fol. 595] at any broker's board in the City of New York, or at public or private sale in the said City or elsewhere, or otherwise to dispose of the same in the discretion of any of the officers of the Bank, without notice of amount due or claimed to be due, without advertisement, and without notice of the time or place of sale, each and every of which is hereby expressly waived, applying the proceeds thereof upon the said indebtedness, together with interest and expenses, legal or otherwise, the undersigned to be liable for any deficiency.

It is further agreed that, upon any sale by virtue hereof, the holder hereof may purchase the whole or any part of such property discharged from any right of redemption, which is hereby expressly released to the holder hereof, who shall have a claim against the maker hereof for any deficiency arising upon such sale.

It is further agreed that any moneys or property at any time in the possession of the Bank belonging to the undersigned or any of them, and any deposits, balance of deposits, or other sums at any time credited by or due from the Bank to the undersigned or any of them may at all times

at the option of said Bank be held and treated as collateral security for the payment of said loan whether due or not due, and said Bank, may at any time at its option without demand for payment and without notice charge said loan to the account of the undersigned or to the account or accounts of any of the undersigned with the Bank, or set off the amount due or to become due upon said loan against any claim of the undersigned or any of them against the Bank.

International Shoe Company, by F. C. Rand, President. F. A. Sudholt, Treasurer.

[On back:] Original bore the following stamp: Nat. Bank of Commerce in N. Y. Paid June 21, 1923. Second Teller.

[fol. 596] COMMISSION'S EXHIBIT No. 10

June 18, 1923.

Mr. Stanley King, 590 Atlantic Avenue, Boston, Mass.

DEAR MR. KING: Enclosed you will find check No. 229 on the National Bank of Commerce, New York, for $4,063,-125.89; also the International Shoe Company's note in favor of the National Bank of Commerce in New York for $4,000,-000.00. The note is not dated.

We have the resolutions from Mr. Blake and will pass them at our Board Meeting tomorrow.

We are not sending this by registered mail because of the delays. Your letter reached us only this morning.

Yours truly, International Shoe Company, by ——, President.

COMMISSION'S EXHIBIT No. 11

Telegram

St. Louis, Mo., June 18, 1923.

Stanley King, 590 Atlantic Ave., Boston, Mass.:

Check and note mailed on New York Central noon train today.

F. C. Rand.

Chg. International Shoe Co.
Gen'l Expense A/C.

COMMISSION'S EXHIBIT No. 13.

[MEMORANDUM. By stipulation only the cover and pages 4, 5, 27, 28 and 29 of this exhibit are here reproduced. A. I. CHARRON, *Clerk.*]

CATALOGUE No. 36

SPRING AND SUMMER, 1921

FEDERAL
International Shoe Co.
Docket 1023 Exhibit 13
Complainant's
Date
Rand Reporter St Louis Mo.

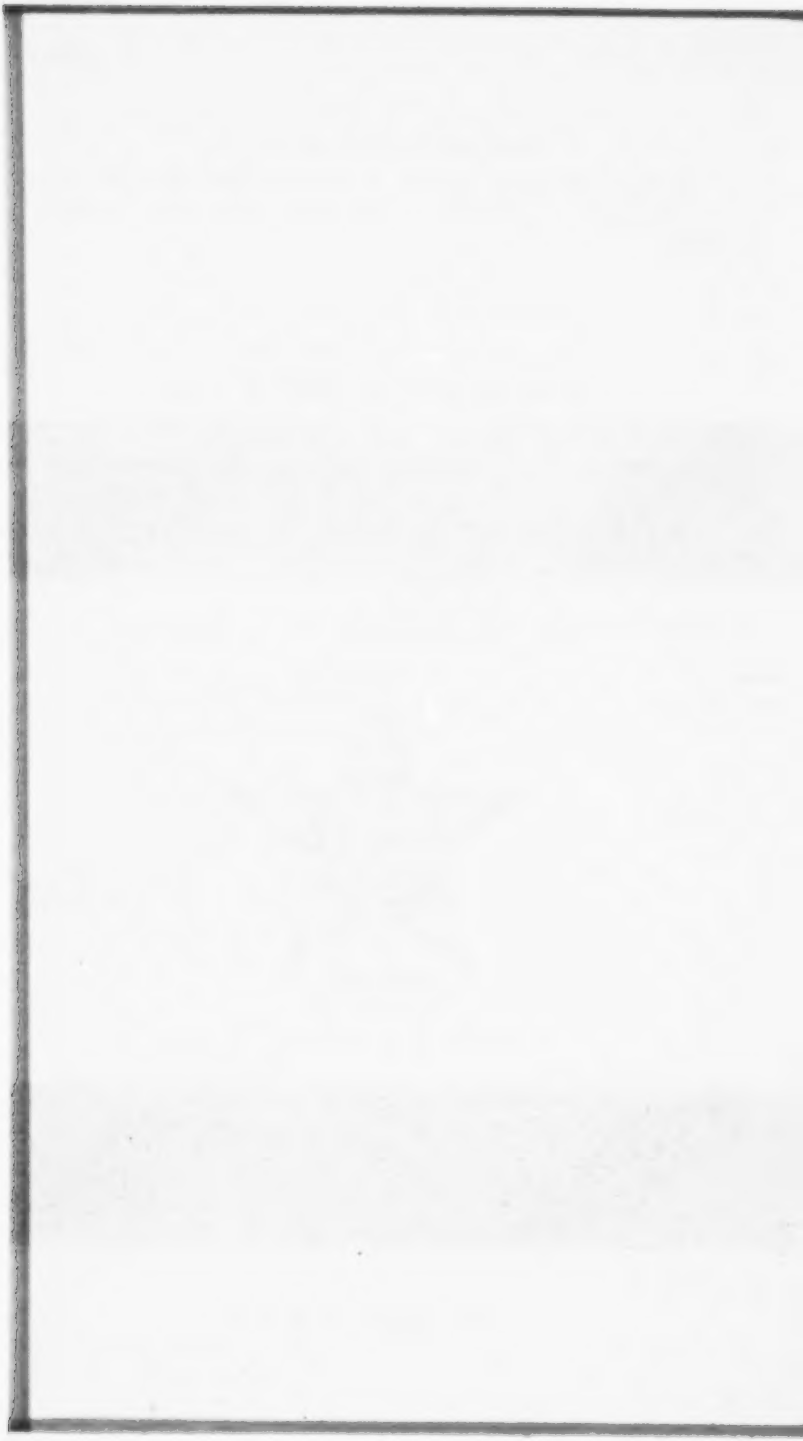
Docket 1023
FTC v. International Shoe Co.

Comm. Ex. 13
5/23/21

J & R S

TRADE MARK
REG.U.S.PAT.OFF.

ST. LOUIS, U. S. A.



Low Cut Styles

For Men

1

1164 "PATRIOT"-Welt. Men's Coco Calf Brogue, Savoy Last, Wing Tip, Lace Oxford, Circular Vamp, Pointed Heel, C 5½-11, D 5-11.

2

1146 "PATRIOT"-Welt. Men's Black Kid, Strand Last, Cap Lace Oxford, Half Rubber Heel, C 5½-11, D 5-11.

3

1162 "PATRIOT"-Welt. Men's Coco Calf, Judge Last, Cap Blucher Oxford, Half Rubber Heel, C 5½-11, D 5-11.

4

1142 "PATRIOT"-Welt. Men's Black Kid, New London Last, Cap Blucher Oxford, Half Rubber Heel, C 5½-11, D 5-11.

Patriot SHOES FOR MEN

5

1184 "PATRIOT"-Welt. Men's Glazed Kangaroo, Judge Last, Cap Blucher Oxford, Half Rubber Heel, C 5½-11, D 5-11.

6

Devon Combination Last

1389 "PATRIOT"-Welt. Men's Melagany Kid, Devon Last, Cap Lace Oxford, Half Rubber Heel, AAA-A 6½-11, AA-B 6-11, A-C 5½-11, B-D 5-11.

Nos. 1389 and 1166

Combination Last

Oxfords

This LAST is designed to fit the foot requiring less heel width, but requiring the standard width across the ball of the foot. It's made according to regular ball measurements, but is two widths narrower at instep and heel, which insures an exact all-round fit.

7

Devon Combination Last

1388 "PATRIOT"-Welt. Men's Coco Calf, Devon Last, Cap Lace Oxford, AA-B 6-11, A-C 5½-11, B-D 5-11.

8

1387 "PATRIOT" Welt. Men's Mahogany Kid, Strand Last, Cap Lace Oxford, Half Rubber Heel. B 6-11, C 5½-11, D 5-11

9

1168 "PATRIOT" Welt. Men's Corn Calf, Survey Last, Cap Lace Oxford, B 6-11, C 5½-11, D 5-11

"Patriot"
"Pilgrim"
and
"Pluck"

Low Cut Shoes
For Men

1948 "PLUCK" Welt. Men's Black Kid, New Lowbrow Last, Cordovi Tip, Lace Oxford, Half Rubber Heel, C 5½-11, D 5-11.

Men's
White Lace Oxfords

1898 "PLUCK" Welt. Men's White Cloth, Strand Last, Cap Lace Oxford, Rubber Heel, B 6-11, C 5½-11, D 5-11

1944 "PLUCK" Welt. Men's Black Kid, Junior Last, Cap Blucher Oxford, Half Rubber Heel, C 5½-11, D 5-11.

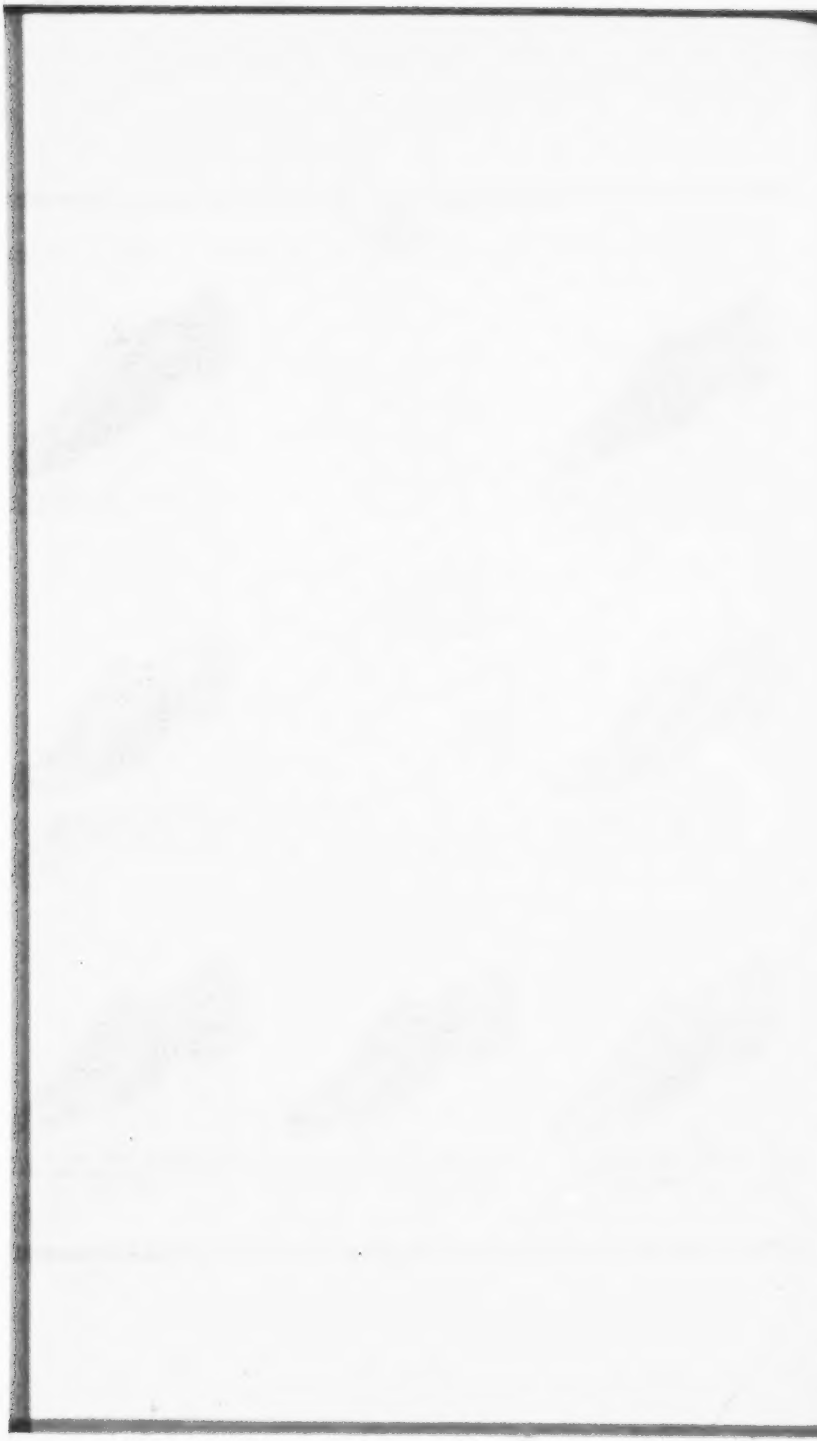
10

1764 "PILGRIM"-Welt. Men's Mahogany Kid, Junior Last, Cap Blucher Oxford, Half Rubber Heel, B 6-11, C 5½-11, D 5-11.

1364 "PATRIOT" Welt. Men's Mahogany Kid, Bridge Last, Imitation Cordovi Tip, Lace Oxford, A 6½-11, B 6-11, C 5½-11, D 5-11.

1788 "PILGRIM"-Welt. Men's Corn Calf, Strand Last, Cap Lace Oxford, B 6-11, C 5½-11, D 5-11.

600



11

Fitu Combination Last

1285 "PATRIOT"-Welt. Men's Mahogany Kid, Fitu Last, Cap Blucher, Half Rubber Heel, AAA-A 6½-11, AA-B 6-11, A-C 5½-11, B-D 5-11.

Patriot SHOE FOR MEN

12

Devon Combination Last

1095 "PATRIOT"-Welt. Men's Cocoa Calf, Devon Last, Cap Bal., Half Rubber Heel, AAA-A 6½-11, AA-B 6-11, A-C 5½-11, B-D 5-11.

13

Fitu Combination Last

1085 "PATRIOT" Welt. Men's Glazed Kangaroo, Fitu Last, Cap Blucher, Half Rubber Heel, AAAA 6½-11, AAA B 6-11, AA-C 5½-11, B-D 5-11.

OUR COMBINATION LAST SHOES

Nos. 1086-1085-1285-1280, which are illustrated on this page, answer a long felt need for a shoe which will perfectly fit the foot of the man with slightly thinner heels than usual, but requiring the standard width across the ball of the foot.

The above numbers are made over our new FITU and DEVON COMBINATION LASTS, which are built two widths narrower through the instep and heel than regular standard lasts, and this will give those requiring a last of this kind an exact all round fit, giving them more comfort and fit in the forepart of the shoe and more smoothness and snugness in the fit of the back of the shoe.

Measurements Are As Given Here	Heel or Back Part	Ball or Fore Part
	AAA	A
	AA	B
	A	C
	B	D

14

1080 "PATRIOT" Welt. Men's Glazed Kangaroo, Broker Last, Imitation Corded Tip Bal., Blind Eyelets and Hooks, Half Rubber Heel, A 6½-11, B 6-11, C 5½-11, D 5-11.

15

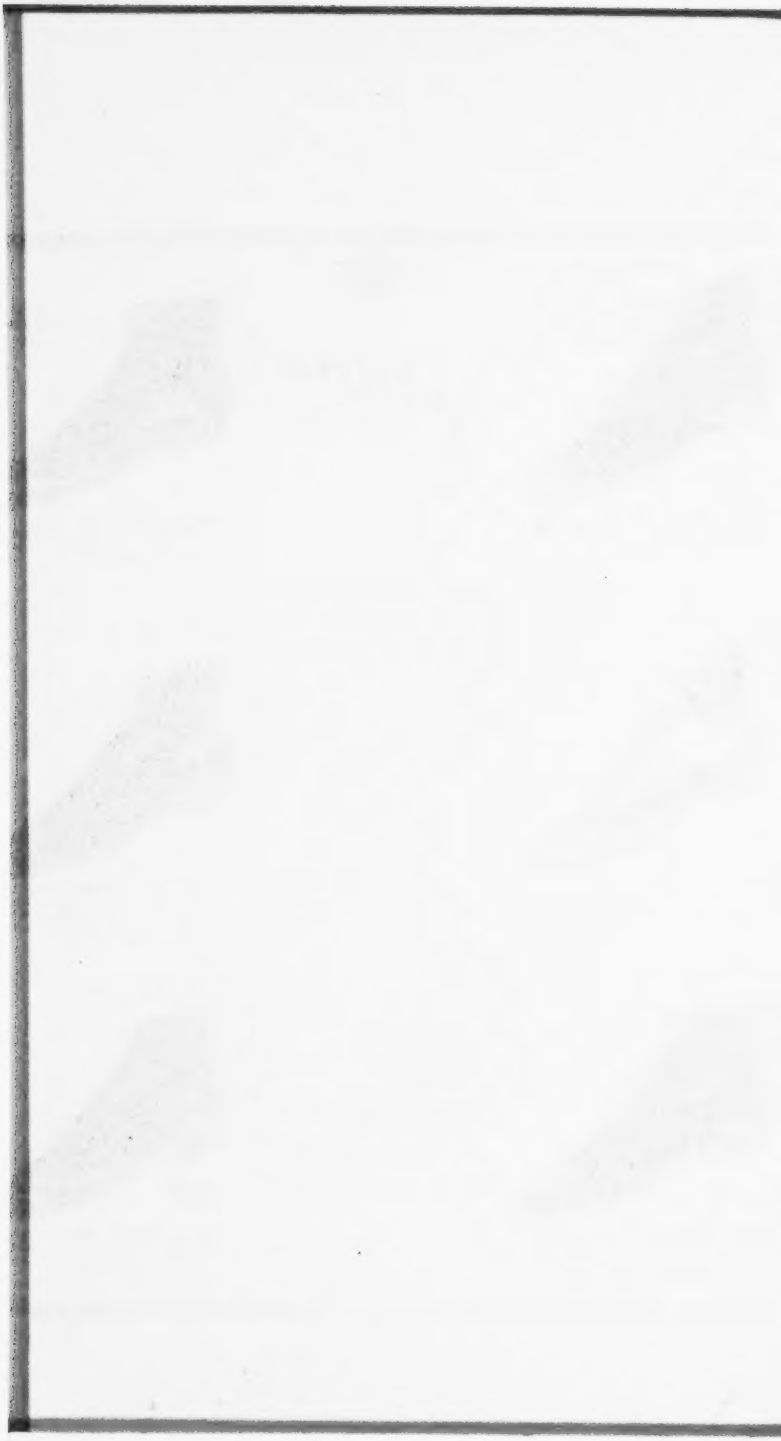
Devon Combination Last

1280 "PATRIOT" Welt. Men's Mahogany Kid, Devon Last, Cap Bal., Half Rubber Heel, AAA A 6½-11, AA B 6-11, A-C 5½-11, B-D 5-11.

16

Made with Half Rubber Heel

1284 "PATRIOT"-Welt. Men's Mahogany Kid, Broker Last, Imitation Corded Tip Bal., Half Rubber Heel, A 6½-11, B 6-11, C 5½-11, D 5-11.



1287 **"PATRIOT"-Welt.** Men's Mahogany Kid, Strand Last, Cap Bal., Half Rubber Heel. A 6½-11, B 6-11, C 5½-11, D 5-11.

"Patriot"

Shoes

For Men

1286 **"PATRIOT"-Welt.** Men's Mahogany Kid, New London Last, Cap Bal., Half Rubber Heel, A 6½-11, B 6-11, C 5½-11, D 5-11.

1066 **"PATRIOT"-Welt.** Men's Glazed Kangaroo, Strand Last, Cap Bal., Half Rubber Heel. B 6-11, C 5½-11, D 5-11.

1026 **"PATRIOT"-Welt.** Men's Gun Metal, Savoy Last, Cap Bal., Flange Heel. B 6-11, C 5½-11, D 5-11.

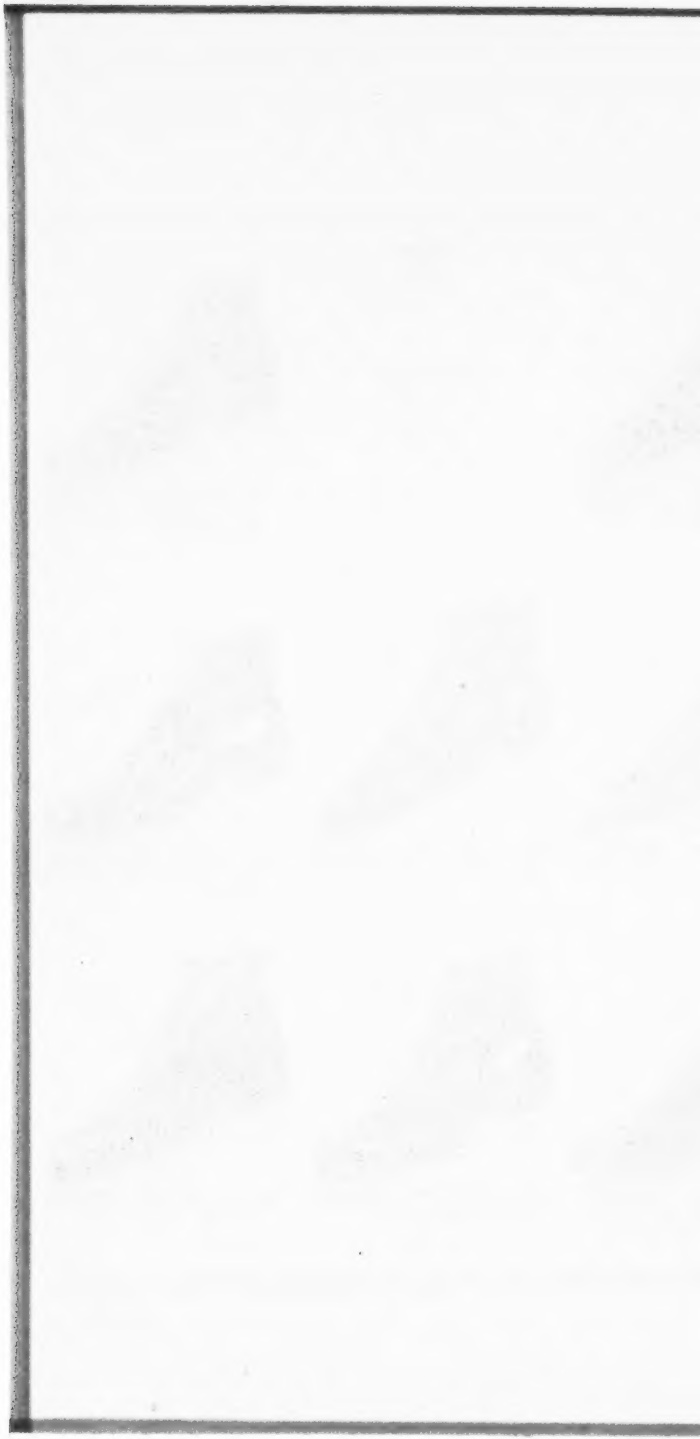
1065 **"PATRIOT"-Welt.** Men's Glazed Kid, New London Last, Cap Bal., Half Rubber Heel, A 6½-11, B 6-11, C 5½-11, D 5-11.

1293 **"PATRIOT"-Welt.** Men's Mahogany Kid, New London Last, Corded Tip Blucher, Extension Sole, Domino Edge, Half Rubber Heel, C 5½-11, D 5-11.

1292 **"PATRIOT"-Welt.** Men's Glazed Kangaroo, Amherst Last, Cap Blucher, Half Rubber Heel. D-E 5-11.

1062 **"PATRIOT"-Welt.** Men's Coco Calf, Judge Last, Cap Blucher, Half Rubber Heel, B 6-11, C 5½-11, D 5-11.

602



1264 **"PATRIOT" Welt.** Men's Brown Calf, Savoy Last, Cap Bal., B 6-11, C 5½-11, D 5-11

"Patriot"

Shoes

For Men

1067 **"PATRIOT" Welt.** Men's Coco Calf, Broker Last, Cap Bal., Half Rubber Heel, B 6-11, C 5½-11, D 5-11.

1082 **"PATRIOT" Welt.** Men's Glazed Kangaroo, Banker Last, Cap Blucher, Cushion Insole, Half Rubber Heel, B 6-11, C 5½-11, D-E 5-11.

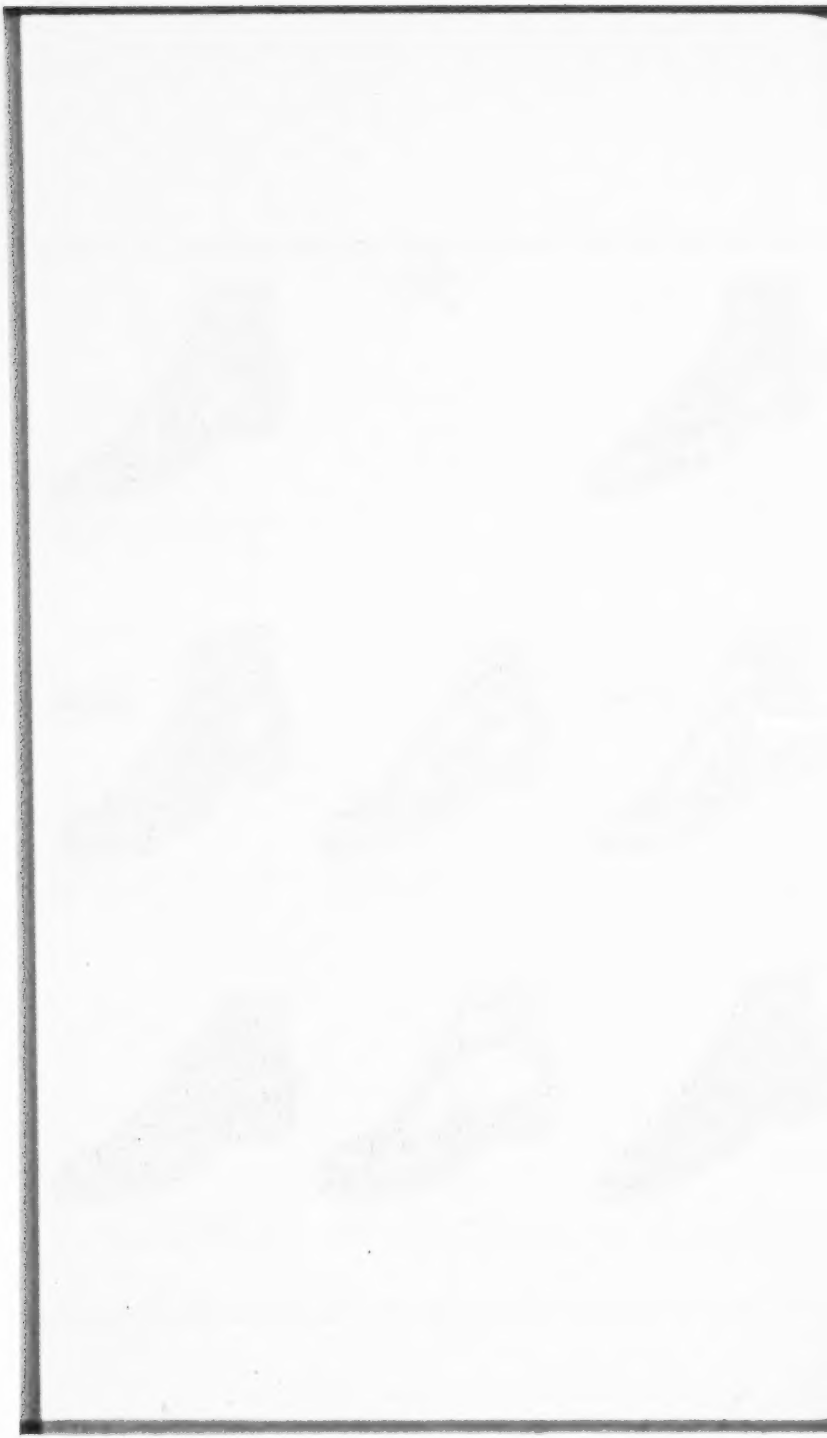
1294 **"PATRIOT" Welt.** Men's Glazed Kangaroo, Judge Last, Cap Blucher, Half Rubber Heel, B 6-11, C 5½-11, D 5-11.

1080 **"PATRIOT" Welt.** Men's Glazed Kangaroo, Freedom Last, Cap Blucher, Cushion Insole, Half Rubber Heel, C 5½-11, D 5-11, F 5-11.

1258 **"PATRIOT" Welt.** Men's Coco Calf, Savoy Last, Cap Bal., Blind Eyelets, Half Rubber Heel, A 6½-11, B 6-11, C 5½-11, D 5-11.

1225 **"PATRIOT" Welt.** Men's All Box, Freedom Last, Cap Blucher, Watertite Welting, ½ D. S., D-E 5-11.

1068 **"PATRIOT" Welt.** Men's Coco Calf, Judge Last, Cap Bal., Watertite Welting, C 5½-11, D 5-11.



[fol. 597] COMMISSION'S EXHIBIT No. 12

Please examine this statement and accompanying cancelled vouchers promptly and report on the reconcilement form enclosed, within ten days after receipt, whether the account agrees with your books or not, if no report is received within ten days the account will be considered correct.

Date: June, 1923.

Treasurer International Shoe Company, St. Louis, Missouri, in Account with the National Bank of Commerce in New York

Debits			Credits		
Date	Description	Amount	Date	Amount	Description
4	75000 00				
	75000 00	150000 00		179011 40	Balance May 31
7	50000 00		4	486483 33	Dep by Goldman Sachs
	25000 00				
	50000 00		21	4061093 72	
	50000 00	175000 00		4000000 00	
8	65000 00		21	487125 00	Dep. Goldman Sachs Co
	50000 00	115000 00	29	383 57	Int.
21		400000 00			
21	4063125 89				
	Payt Securities				
	6540 00	4069665 89			
22	Postage & Ins			[In lead pnecil.]	
	47			4063125 89	
	Payt Sec			4061093 72	
	6490 00	6490 47			
23	Postage & Ins	47		2031 17	
26	Payt Securities	6490 00		Charge McElwain stockholders, 7/3	
27	Postage & Ins	47			
28		100000 00			
29	100000 00				
	10450 05	110450 05			
30		50000 00			
			30	430999.67	Balance

All items shall be deemed credited subject to actual final payment. For the collection of all items the National Bank of Commerce in New York will act only as the collecting agent of the depositor, observing due diligence, but will not be liable in case of failure or negligence of other collecting agents, nor for any loss in transmission, nor for sending items direct to the bank upon which they are drawn.

(Here follows Commission's Exhibit No. 13, side folio pages 598, 599, 600, 601, 602, and 603)

[fol. 604] COMMISSION'S EXHIBIT No. 14

[On Letterhead of International Shoe Co.]

St. Louis, Mo., May 24, 1923.

W. H. McElwain, Boston, Massachusetts.

GENTLEMEN: We offer to buy from you all your properties and assets, real, personal and mixed, tangible or intangible, of any and all descriptions, whether carried on your books as valuable assets or otherwise, upon the basis outlined hereinafter. This offer to buy shall be open for your acceptance until 12 o'clock noon Eastern time on Wednesday, June 13, 1923.

We offer to pay to you in cash the sum of $3,063,125.89 for the aforesaid properties and in consideration of the terms and conditions hereinafter set forth.

The sum of $3,063,125.89 is arrived at by taking the total net values of your properties and assets as shown by your books and by an audit thereof made by Marwick, Mitchell & Company as of April 30, 1923 ($2,563,125.89) and adding thereto the sum of $500,000.00.

As a further consideration for said properties and assets we will agree to act as trustees in liquidation for you and in your behalf administer the liquidation of all lawful accounts, claims and demands of any and all natures which may exist or which may arise against your company.

We will further agree to assume and to pay any and all lawful accounts, claims and demands that now exist or which may arise against your Company, when the same may become due and payable.

Upon acceptance you will agree to make such warranty deeds, conveyances, bills of sale, assignments and transfers covering the properties to be sold as may be necessary to transfer title to us; also that such contracts, privileges, licenses, exemptions and other things or benefits now vested in or enjoyed by you but which in their nature are not assignable or which for any reason cannot be assigned immediately, will be held in trust by you for our benefit and [fol. 605] you will hereafter manage and dispose of the same subject to our control and direction.

Such claims and demands as you may have against others, whether now in litigation or hereafter litigated shall be pre-

sented in your name, for our benefit. We will agree to assume all expenses which may accrue on account of such litigation.

You will further agree to sell to us for the sum of $1.00 at any time the W. H. McElwain Company may be dissolved or as soon thereafter as is lawful, the sole right to use the name W. H. McElwain Company.

You agree to give to us a statement under oath, showing the names and addresses of all your creditors on the date of your acceptance of this offer, together with the amount due each and the date when due, and will also deliver to us written waivers made by substantially all of your creditors of their rights under the Bulk Sales laws of the states of Massachusetts, New Hampshire, Vermont, New York, Ohio, Illinois, California and Missouri, and the Republic of Argentine.

Transfer of title of all the properties as aforesaid and payment therefor shall be made on or before July 2, 1923, provided that if it is impossible for you to make such transfer of title on or before July 2, 1923, a reasonable extension of time will be granted by us.

If your stockholders accept this offer, we shall require a certified copy of the minutes of the stockholders meeting in which the acceptance is made and certified copies of the minutes of your directors meeting or meetings in which the various transfers, conveyances, etc., are approved.

If your stockholders accept this offer, immediately thereupon you will notify us thereof and we will embody the pertinent terms and conditions of this letter into the form of a contract for purchase and sale to be executed by your and our proper officers.

Yours truly, International Shoe Company, by F. C. Rand, President.

[fol. 606] COMMISSION'S EXHIBIT No. 15

W. H. McElwain Company

Notice of Special Meeting of Stockholders

Pursuant to the call of the President, a special meeting of the Stockholders of W. H. McElwain Company will be held at 590 Atlantic Avenue, Boston, Massachusetts, on

Wednesday, June 20, 1923, at ten o'clock in the forenoon, for the following purposes:

(1) To consider and act upon the question of reducing the capital stock of the Company by the cancellation and extinguishment of 1,419 shares of First Preferred Stock of the par value of $100 each, which have been issued, but are in the treasury of the Company, of 2,000 shares of Second Preferred Stock of the par value of -50 each, which have been issued but are in the treasury of the Company, of $52,000 shares of such Second Preferred Stock which the holders thereof may offer for cancellation and extinguishment (a total of 54,000 shares of Second Preferred Stock), of 104 shares of Common Stock of the par value of $50 each, which have been issued but are in the treasury of the Company, and of 69,346 shares of such Common Stock which the holders thereof may offer for cancellation and extinguishment (a total of 69,450 shares of Common Stock).

(2) To consider and act upon the question of accepting one of two offers of International Shoe Company for the purchase of all the property and assets of W. H. McElwain Company of any and all descriptions, as follows:

First offer: For the sum of $15,537,821.91 in cash, W. H. McElwain Company to pay and perform all its liabilities and obligations, such liabilities, amounting, exclusive of capital stock, to $12,474,696.02.

Second offer: For the sum of $3,063,125.89, the said International Shoe Company to assume and agree to pay and perform all the liabilities and obligations — W. H. McElwain Company, exclusive of capital stock.

(3) If the stockholders shall vote to accept one of the said offers, to consider and act upon the question of author- [fol. 607] izing and instructing the Board of Directors of the Company to carry out in its behalf, and through such officers as the Board shall designate, the terms of such offer and acceptance, including the conveyance of all its property, real, personal and mixed, and, at such time or times as the Board shall determine, to distribute the balance of the purchase price among stockholders of the Company in accordance with the requirements of its articles of organization and by-laws.

(4) To consider and act upon the question of authorizing and instructing the Board of Directors of the Company, after the completion of the sale of its property and assets, the payment of its debts and the distribution of the balance then remaining of the purchase price, to liquidate and dissolve the corporation, including, if the Board shall so determine, proceedings for its dissolution under Chapter 155, Section 50, of the General Laws of the Commonwealth of Massachusetts.

(5) To consider and act upon the question of ratifying and confirming the acts and proceedings of the Board of Directors and of the Executive Committee of the Company since the annual meeting of the Stockholders, held January 25, 1923.

(6) To transact such other business as may properly come before the meeting.

Clare S. Howland, Clerk.

COMMISSION'S EXHIBIT No. 16

Copy

Old Colony Trust Company

Clifford P. Warren, Counsellor-at-Law,

53 State Street, Boston

June 15, 1923.

Old Colony Trust Company, Boston, Mass., Transfer Department.

GENTLEMEN: Will you please, from the stock of W. H. McElwain Company which I have delivered to you, and which is listed in my letter to you of the 12th instant, transfer to Bennett, Limited, a Canadian corporation, whose address is Chambly Canton, Province of Quebec, Canada, the following:

First Preferred Stock, 69,946 shares.

Common Stock, 491 shares.

[fol. 608] I hand you check in the amount of $2,807.68 in payment for the Federal and Massachusetts transfer tax

stamps upon this stock at the rate of four cents upon each $100 of par value.

Yours truly, Stanley King.

COMMISSION'S EXHIBIT No. 17

[MEMORANDUM.—This exhibit is a copy of the National Bank of Commerce of New York statement of the account W. H. McElwain Co., Boston, Mass., for June 1923. Only such printed matter on the form as relates to the typewritten figures is here reproduced.—A. I. Charron, clerk.]

Debits		Credits		
Date	Amount	Date	Amount	
June 21, 1923.	4,061,003.72	June 16, 1923.	1,000.00	Balance
		21,	4,063,125.89	
		30,	3,032.17	Balance

COMMISSION'S EXHIBIT No. 18

[Stamped:] Nat. Bank of Commerce in N. Y. Paid Jun. 21, 1923. Second Teller.
JER:DEW.

$4,000,000.00. New York, June 21, 1923.

The undersigned hereby applies to National Bank of Commerce in New York for a loan to the undersigned of Four Million Dollars ($4,000,000.00) to be credited to the undersigned's account, which will be received by us as a trust fund.

It is expressly agreed that all stocks, bonds or other securities, or the proceeds thereof, purchased or paid for by the undersigned with, or which may come into possession or control of the undersigned out of the avails of, said loan shall be by the undersigned, or the undersigned's agent or representative held in trust for and deposited with National Bank of Commerce in New York (hereinafter termed the Bank) it being the intention and agreement of the undersigned to pledge and deposit with the [fol. 609] Bank and to subject to the lien and control of the

Bank as such pledgee the securities or moneys so acquired, as collateral to said loan and to any other obligation or indebtedness of the undersigned to the Bank; and it is further agreed that the Bank shall have a lien upon all property of the undersigned and all collaterals pledged by the undersigned, now or hereafter in possession of the Bank, or under its control, as security for any indebtedness of the undersigned now existing or to become due or that may be hereafter contracted, with the right at any time to demand additional security and with the right, in case of failure to comply with such demand for additional security or in case of default in payment, to sell without advertisement or notice to the undersigned, at any broker's board in the City of New York, or at public or private sale in the said City or elsewhere or otherwise to dispose of the same in the discretion of any of the officers of the Bank, without notice of amount due or claimed to be due, without advertisement, and without notice of the time or place of sale, each and every of which is hereby expressly waived, applying the proceeds thereof upon the said indebtedness, together with interest and expenses, legal or otherwise, the undersigned to be liable for any deficiency.

It is further agreed that, upon any sale by virtue hereof, the holder hereof may purchase the whole or any part of such property discharged from any right of redemption, which is hereby expressly released to the holder hereof, who shall have a claim against the maker hereof for any deficiency arising upon such sale.

It is further agreed that any moneys or property at any time in the possession of the Bank belonging to the undersigned or any of them, and any deposits, balance of deposits, or other sums at any time credited by or due from the Bank to the undersigned or any of them may at all times at the option of said Bank be held and treated as collateral security for the payment of said loan whether due or not due, and said Bank, may at any time, at its option without demand for payment and without notice charge said loan to the account of the undersigned or to the account or accounts of any of the undersigned with the Bank, [fol. 610] or set off the amount due or to become due upon

said loan against any claim of the undersigned or any of them against the Bank.

International Shoe Co., by F. C. Rand, President.
F. A. Sudholt, Treasurer.

[Written across face: Paid.]

COMMISSION'S EXHIBIT No. 19.

Deposited by International Shoe Co. in the National Bank of Commerce in New York

June 21, 1923.

	Dollars, cents
Bills	
Specie	
Checks	
A—	4,000,000.00
	8,061,093.72

[Stamped on face:] Duplicate Ticket. Receipted Jun. 21, 1923. R., Teller.

COMMISSION'S EXHIBIT No. 20

Deposited by International Shoe Co. in the National Bank of Commerce in New York

June 21, 1923.

	Dollars, cents
Bills	
Specie	
Checks	
N. Y.	4,061,093.72

[Stamped on face:] Duplicate Ticket. Receipted Jun. 21, 1923. R., Teller.

[fol. 611] COMMISSION'S EXHIBIT No. 21

Deposited by W. H. McElwain Company in the National Bank of Commerce in New York

June 21, 1923.

	Dollars, cents
Bills	
Specie	
Checks	
N. Y.	4,063,125.89

4,348,955.77s

[Stamped on face:] Duplicate Ticket. Receipted Jun. 21, 1923. R., Teller.

COMMISSION'S EXHIBIT No. 22

Deposited by Bennett, Limited, in the National Bank of Commerce in New York

June 21, 1923.

	Dollars, cents
Bills	
Specie	
Checks	
N. Y.	4,061,093.72

[Stamped on face:] Duplicate. Receipted Jun. 21, 1923. R., Teller.

COMMISSION'S EXHIBIT No. 23

Treasurer Bennett, Ltd., Chamberly, Canton, Canada, in Account with the National Bank of Commerce in New York

Debits			Credits		
Date	Description	Amount	Date	Amount	Description
1923. June			1923. May		
4	60 00		31	639 45	Balance
	83 33				
		143 33			
			June		
5		86 54	1	1,000 00	Remittance May 30
6	2 00			35 50	Remittance June 1
	2 00				
[fol. 612]					
	20 00				
		24 00	16	3,000 00	Deposited by Canadian Bank of Commerce
7	20 00				
	40 00		20	1,000 00	Remittance June 16
	20 00				
	2 00		21	4,061,093 72	Deposit
	100 00				
		182 00			
			22	1,500 00	Remittance June 20
8	100 00			271 32	Remittance June 21
	40 00				
		140 00			
			27	1,000 00	Remittance June 25
9		8 00			

Debits			Credits		
Date 1923.	Description	Amount	Date 1923.	Amount	Description
June			June		
12	100 00		28	15 48	Remittance June 26
	130 00		29	3 25	Interest
	86 54				
		316 54			
13		16 00			
14	253 12				
	2 00				
		255 12			
15		16 00			
18	10 00				
	40 00				
		50 00			
19	86 54				
	674 33				
		760 87			
20		13 50			
21		600 00			
21		4,061,093 72			
		190 71			
		247 50			
24	515 50				
	46 61				
	247 66				
	4 00				
	205 00				
	37 80				
	10 00				
	414 11				
		1,480 68			
26		86 54			
[fol. 613]					
27	3 00				
	75 00				
		78 00			
28	50 00				
	86 54				
	4 00				
	1,000 00				
		1,140 54			
30		6 00			
	To Balance	2,623 13			
		4,069,558 72	June 30	2,623 13	Balance

I, Paul B. Holmes, hereby certify that this is a true and correct statement of the account of Bennett, Limited, with the National Bank of Commerce in New York, for the month of June 1923, and was made from the books and records of the National Bank of Commerce in New York, and is a correct statement of the account of Bennett, Limited, which was referred to and identified by me in my testimony before an examiner of the Federal Trade Commission in New York, N. Y., on June 19, 1924, in Docket 1023—International Shoe Company.

Paul W. Holmes, Auditor.

February 24, 1925.

RESPONDENT'S EXHIBIT No. 1

W. H. McElwain Company

Consolidated Balance Sheet, April 30, 1921

Assets

Quick Assets:		
Cash	$2,172,345.16	
Receivables	8,028,082.41	
Advances to Subsidiaries	630,350.09	
Merchandise	10,275,521.43	
Prepaid items	342,484.55	
		21,448,783.64
Securities		387,153.43
Plant		5,063,183.16
National Advertising Campaign		201,316.77
		$27,100,437.00

Liabilities

Debits:			
Notes		$15,219,000.00	
Accounts		1,958,349.25	
			17,177,349.25
Capital Stock:			
First Preferred	7,140,000.00		
Less Purchase for retirement	141,900.00		
		6,998,100.00	
Second Preferred	2,700,000.00		
Less Treasury	100,000.00		
		2,600,000.00	
			9,598,100.00
[fol. 614] Common (Par)	3,500,000.00		
Less Treasury	5,200.00		
		3,494,800.00	
		(Book Value)	69,532.67
Reserve for Federal Taxes			255,455.08
			$27,100,437.00

[In lead pencil]

Common outstanding	3,494,800.00
Book value—this statement	69,532.67
Deficit	3,425,217.33
Advertising item	201,316.77
	3,626,584.10

RESPONDENT'S EXHIBIT No. 2

5-9-21.

On motion of John C. Roberts, seconded by H. W. Peters, the following preambles and resolutions were unanimously adopted:

Whereas, The W. H. McElwain Company has submitted to this Board the results of their detailed inventory and

financial statement of the condition of the W. H. McElwain Company as of date May 6th, 1921, and have offered to sell the entire present outstanding Capital Stock of said company for the equivalent of $9,460,832.50 on the following basis to-wit:

No. shares	Par value	Price per share	Total
69,981 1st Pfd.	$100.00	$82.50	$5,763,432.50
52,000 2nd "	50.00	37.50	1,950,000.00
69,896 Common	50.00	25.00	1,747,400.00
			$9,460,832.50

Payment for said stock shall be made with Preferred and Common Stock of the International Shoe Company at $109.00 and $30.00 per share respectively, on the following basis, to-wit:

For	Shares	Par value	Price per share	Total	
1st Preferred	52,875 Pfd.	$100.00	$109.00	$5,753,375.00	
				57.50	cash
[fol. 615] *2nd Preferred	17,890 Pfd. or 65,000 Com.	$100.00 / No Par	$109.00 / $30.00	$1,950,010.00 / $1,950,000.00	
Common	58,245 Com.	No Par	$30.00	$1,747,400.00	
				$9,460,842.50	

Whereas, Jackson Johnson, Chairman of the Board, and F. C. Rand, President, and W. H. Moulton and Horton Watkins, Vice-Presidents, together with several other officers of the International Shoe Company, after a careful analysis of said inventory and representations made, have concluded that the sum of $9,460,832.50, in their judgment, represents a fair and reasonable basis of the sound values of the net assets of the W. H. McElwain Company, and

Whereas, after careful consideration and discussion, the above conclusions as to the sound values were fully concurred in by President J. Franklin McElwain and Vice-President Stanley King of the W. H. McElwain Company, and

Whereas, Jackson Johnson, Chairman, F. C. Rand, President, and W. H. Moulton, Vice-President and General Superintendent, after a trip to Boston and an inspection of the physical properties and investigation of the condition

*Individual Second Preferred stockholders may elect to take either Preferred or Common Stock.

of the business of the W. H. McElwain Company, to be supported by an audit of Chase & Company, Public Accountants of Boston, have reported to this Company that in their judgment the net assets of the W. H. McElwain Company are reasonably worth the prices herein stated, and that the association with W. H. McElwain Company resulting from the merger of these two companies is, in their judgment, desirable to properly meet the demands of the growing business of the International Shoe Company.

Now, therefore, be it resolved, that this Company accept the aforesaid proposal on the basis aforesaid, and appoint Jackson Johnson, Chairman, F. C. Rand, President, and F. A. Sudholt, Secretary, as a committee with full authority to make such agreements as may be necessary to consum-ate the merger of the two companies by the proper exchange of stock.

[fol. 616] RESPONDENT'S EXHIBIT No. 3

May 10th, 1921.

Mr. J. Franklin McElwain, President; Mr. Stanley King, Vice-President, W. H. McElwain Company, Boston, Mass.

DEAR SIRS: Following our several conferences with you regarding the merging of the shoe, tannery and affiliated interests of the W. H. McElwain Company with the International Shoe Company, and after considering your recent business statement, we believe that a mutually satisfactory arrangement can be made on the following basis:

(1) For your First Preferred Stock on the valuation basis of $82.50 per share, we will give International 8% Cumulative Preferred Stock figured on the basis of $109.00 per share.

(2) Four your Second Preferred Stock on the valuation basis of $37.50 per share, we will give International 8% Cumulative Preferred Stock figured on the basis of $109.00 per share, or International Common Stock figured on the basis of $30.00 per share.

(3) For your Common Stock on the valuation basis of $25.00 per share, we will give International Common Stock figured on the basis of $30.00 per share.

This plan contemplates that you will, with all reasonable speed, in such manner as you deem best and at your expense, secure the surrender of all of the shares of each class of the stock of the W. H. McElwain Company.

In our recent conferences, both you and we have assumed that your business statement based on your very recent inventory is accurate in all essential particulars and the plan stated here is based on that assumption.

As the maintenance of your present working organization is an important factor in our conclusions, we would expect that in the event of this merger your organization would proceed in its regular, uninterrupted course.

Yours very truly, International Shoe Company, By —— ——, President.

FCR/AA.

[fol. 617] RESPONDENT'S EXHIBIT No. 4

Memorandum of agreement made May 11, 1921, between International Shoe Company and J. F. McElwain, Stanley King, and their undersigned associates, holders of a majority of the common stock of W. H. McElwain Company.

1. The International Shoe Company agrees to purchase all the outstanding shares of Capital Stock of W. H. McElwain Company on the following terms:

2. J. F. McElwain and his associates agree to sell all the shares of said Company which they own or control on such terms and to procure the sale to the International Shoe Company of all the remaining shares of W. H. McElwain Company all on such terms.

3. For the First Preferred Stock of W. H. -Elwain Company—one share of International Shoe Company's eight per cent cumulative Preferred Stock (of the same kind as now outstanding) plus one dollar in cash for each one and one-third shares of W. H. McElwain Company First Preferred Stock.

4. For the Second Preferred Stock of W. H. McElwain Company on a valuation basis of thirty-seven dollars and fifty cents per share—such International preferred stock

on a valuation basis of one hundred and nine dollars per share or at the option of the several holders of McElwain Second Preferred exercised at the time of deposit, Common Stock of the International on a valuation basis of thirty dollars per share for all or part of his McElwain Second Preferred shares.

5. For the Common Stock of W. H. McElwain Company on a valuation basis of twenty-five dollars a share—common stock of International on a valuation basis of thirty dollars a share.

6. As the shares of the McElwain Company are deposited from day to day at the Old Colony Trust Company, Boston, the International Shoe Company will issue its own shares in exchange and make payment as above provided; and it will make the Old Colony Trust Company its transfer agent for the purpose of making the exchange promptly.

7. J. F. McElwain and his associates agree to procure [fol. 618] the sale of all outstanding shares of McElwain Company to the International Shoe Company with due diligence and will assume the expense thereof. Stamp taxes on the issuance of International shares shall be borne by it and similar taxes on McElwain shares deposited shall be borne by the depositor.

8. Messrs. Jackson Johnson and Frank C. Rand personally agree to buy or sell for cash at the time of exchange at the option of the several depositors fractional shares of International Shoe Company stock to which any depositor becomes entitled at the rate of one hundred and nine dollars a share for International Preferred and thirty dollars a share for International Common.

9. Messrs. Jackson Johnson and Frank C. Rand agree that at least eight financially responsible directors of International Shoe Company personally will purchase for one hundred and nine dollars a share, all or any of the International Shoe Company Preferred Stock to which a depositor of McElwain First Preferred Stock become entitled, provided that at the time of deposit he elects to sell his shares and deposits them with the Old Colony Trust Company in escrow. The directors will pay for at least half of said stock within one year and for the balance

within two years and at their option may purchase on any dividend date meanwhile; making payment to the Old Colony Trust Company. Until paid for the shares shall be held by the Old Colony Trust Company and dividends on them as received by the Old Colony Trust Company shall be paid to the respective depositors. For shares subject to this paragraph the Old Colony Trust Company shall issue trust receipts to the depositors. This arrangement shall be embodied in a formal agreement between the Old Colony Trust Company and such directors of International Shoe Company.

10. An audit of the books and accounts of W. H. McElwain Company is now being made by Harvey S. Chase & Company, public accountants, of Boston, and shall be submitted to the International Shoe Company immediately upon its completion. The agreements of International Shoe Company are based upon the assumption that this audit will show that the balance sheet of April 30, 1921 recently submitted to the International Shoe Company by [fol. 619] Messrs. McElwain and King, is accurate in all essential particulars. If this proves not to be the case, the International Shoe Company may within ten days from the receipt of the audit withdraw from this agreement.

11. The parties agree that if within ten days Mr. James J. Storrow shall so elect and shall notify International Shoe Company and Messrs. McElwain and King, then in place of paragraph 9 above the following provision shall be substituted:

Messrs. Johnson and Rand agree that the directors of International Shoe Company personally will provide the sum of one million dollars in cash at the Old Colony Trust Company as may be required with which the Old Colony Trust Company shall purchase for their account at one hundred and nine dollars per share — shares of International Preferred to which depositors of McElwain First Preferred stock become entitled under this agreement to be paid to such depositors as elect to sell at the time of deposit. The obligation of the directors of International Shoe Company to purchase International Shoe Preferred Stock under this paragraph is limited to one million dollars.

The International Shoe Company executes this agreement by Jackson Johnson, Chairman of the Board, and Frank C. Rand, President thereto duly authorized. J. Franklin McElwain and Stanley King act for their associates under a power of attorney.

International Shoe Company, by Jackson Johnson, Chairman of the Board; Frank C. Rand, President; J. Franklin McElwain, Stanley King, Charles J. Prescott, George Hutchinson, A. G. Matless, Edw. L. Prescott, Winfield L. Shaw, Al-
[fol. 620] len N. Bennett, Lewis B. Jackson, Seward M. Paterson, by J. Franklin McElwain and Stanley King, Their Attorneys-in-fact.

We approve of the above agreement and agree to use our best efforts to secure the acceptance of it by the holders of First Preferred Stock of W. H. McElwain Company.

Lee, Higginson & Co.

RESPONDENT'S EXHIBIT No. 5

Upon motion of Mr. H. Watkins, seconded by Mr. Tipton, the following preambles and resolution were unanimously adopted:

"Whereas, the stockholders of W. H. McElwain Company have offered and agreed to sell to this corporation all of its outstanding fully paid and non-assessable seven per cent (7%) Cumulative Preferred Capital Stock (Sixty-nine Thousand Nine Hundred and Eighty-one (69,981) shares) of the par value of One Hundred Dollars ($100.00) each, at a valuation of eighty-two and 50/100 Dollars ($82.50) per share; all of its outstanding fully paid and non-assessable six per cent (6%) Cumulative (with certain rights as to extra dividends) Second Preferred Capital Stock (Fifty-two Thousand (52,000) shares) of the par value of Fifty Dollars ($50.00) per share at a valuation of Thirty-seven and 50/100 Dollars ($37.50) per share; and all of its outstanding fully paid and non-assessable Common Capital Stock (Sixty-nine Thousand, Eight Hundred and Ninety-six (69,896) shares) of the par value of Fifty Dollars ($50.00) per share, at a valuation of Twenty-five

Dollars ($25.00) per share, payment to be made for stock, viz:

(a) For each one and one-third (1⅓) shares of said First Preferred stock—one (1) share of International Shoe Company's fully paid and non-assessable eight per cent (8%) Cumulative Preferred Capital Stock of the par value of One Hundred Dollars ($100.00) per share, and One Dollar ($1.00) in cash; that is to say, for said First Preferred Stock on a valuation of Eighty-two and 50/100 Dollars [fol. 621] ($82.50) per share in said International Shoe Company, Preferred Stock on a valuation of One Hundred and Nine Dollars ($109.00) per share;

(b) For said Second Preferred Capital Stock, at a valuation of Thirty-seven and 50/100 Dollars ($37.50) per share, in said International Shoe Company, Preferred Stock on a valuation of One Hundred and Nine Dollars ($109.00) per share, or, at the option of the several individual holders of said Second Preferred Stock, in the fully paid and non-assessable Common Capital Stock without par value of International Shoe Company, at a valuation of Thirty Dollars ($30.00) per share, provided, however, that such option must be exercised at the time said Preferred Stock is deposited for exchange;

(c) For W. H. McElwain's said Common Stock, on a valuation of Twenty-five Dollars ($25.00) per share in said International Shoe Company's Common Stock at a valuation of Thirty Dollars ($30.00) per share; that is to say, for each of the McElwain Common five-sixths (5/6) of a share of International Shoe Company's Common; and

Whereas, the aggregate value of all the outstanding stock of W. H. McElwain Company at the prices above stated aggregates $9,470,832.50; and

Whereas, the net value of all the properties of W. H. McElwain Company, after payment of all its debts and liabilities, is represented by its stockholders to be of at least said sum of $9,470,832.50; and

Whereas, the net value of all the properties of W. H. McElwain Company, after payment of all its debts and liabilities, is represented by its stockholders to be of at least said sum of $9,470,832.50; and

Whereas, in the judgment of this Board the properties of W. H. McElwain Company are necessary for the growing business of this corporation and all of the shares of the said outstanding Capital Stock of W. H. McElwain Company are a good and sufficient consideration for the shares of stock demanded therefor as above set forth; now, therefore,

Be it Resolved, that the offer of the stockholders of W. H. McElwain Company to sell to this corporation all of its said stock which the Board of Directors do hereby ad- [fol. 622] judge and declare to be of the value of at least $9,470,832.50, and necessary for the business of this corporation, be and it is hereby accepted; and

Resolved further, that the officers of this corporation be and they are hereby authorized and directed to issue and deliver in payment of said property in accordance with the said offer, that is to say, to exchange certificates of the fully paid and non-assessable Capital Stock of this corporation for all the certificates of the fully paid and non-assessable Capital Stock of W. H. McElwain Company, at the prices hereinbefore set forth, aggregating $9,470,-832.50, and

Resolved further, that the Old Colony Trust Company of Boston, Massachusetts, be and is hereby appointed Transfer Agent for this corporation for the purpose of making the exchange of stock promptly as herein set forth, in accordance with "Memorandum of Agreement of May 11, 1921," hereinbefore referred to.

RESPONDENT'S EXHIBIT No. 6

Mr. F. C. Rand, President of the company, presented to the Board a "Memorandum of Agreement made May 11, 1921, between International Shoe Company and J. F. McElwain, Stanley King and other undersigned associate holders of a majority of the Common Stock of W. H. McElwain Company," approved by Lee, Higginson & Co.

(Herewith referred to as a part of these minutes.)

Upon motion of Mr. H. Watkins, seconded by Mr. Jamison, the action of Mr. Jackson Johnson, Chairman of the

Board, and Mr. F. C. Rand, President, in signing said agreement was unanimously approved.

RESPONDENT'S EXHIBIT No. 7

May 12, 1921.

Mr. James J. Storrow, c/o Lee, Higginson & Co., Boston, Mass.

DEAR MR. STORROW: In thinking about our conference with you in Chicago on yesterday, I feel that we did not [fol. 623] make it entirely clear to you our reason for fixing definite values on the several types of stock of the McElwain Company. Possibly this can best be done by taking up the negotiations from the beginning, which I will try to do briefly in this letter as follows:

About April 10th Messrs. J. F. McElwain and Stanley King came to St. Louis to confer with the International Shoe Company in regard to a sale of the W. H. McElwain Company. In this conference, it developed that the McElwain Company had in 1920 sustained losses which not only affected its volume of business, but seriously impaired its capital investment.

Representatives of the International Shoe Company, at the invitation of the McElwain Company, came to Boston on April 25th for a further conference with you and the McElwain Company. We suggested that a careful inventory be taken during the week ending May 7th in order that a definite basis of purchase might be determined. When this inventory had been completed, Messrs. McElwain and King immediately came to St. Louis and presented the figures to us, with a proposal that we buy the stock of the company on the basis of its sound values as shown by the inventory, without regard for or consideration of their personal interests as common stockholders.

With a full realization that the value of the McElwain Company to the International Shoe Company rested on its uninterrupted continuity of operation under its present management, we declined to consider the proposal as submitted. Our position was clearly stated to them, and on

yesterday to you, that we had unlimited confidence in the integrity and ability of the McElwain management, but that, in our judgment, this efficiency would be seriously impaired if the whole burden had to fall on the common stockholders as proposed by Messrs. McElwain and King.

We realized that the holders of common stock are the men on whom the management of the McElwain Company has rested and will continue to rest—and that we could not succeed with the McElwain Company as a part of the International at the total self-sacrifice of these gentlemen.

In these circumstances, we felt that the whole trade for [fol. 624] the McElwain Company depended on the determination of an equitable and fair relation of value between the First Preferred, Second Preferred and Common Stock of the McElwain Company.

With these thoughts in mind, the International Shoe Company made for each type of stock the definite offer, which, after discussion with you in Chicago yesterday, was accepted.

This letter is written because I should like you to know that when we stipulated in our offer a fixed price for each kind of stock, we did so, not arbitrarily, but in the clear conviction that this was vital to the success of our future operations.

Respectfully yours, International Shoe Company, by ——— ———, President.

FCR/AA

RESPONDENT'S EXHIBIT No. 8

Telegram

St. Louis, Mo., May 14th, 1921.

James J. Storrow, % Lee, Higginson & Co., Boston, Mass.

We accept Harvey S. Chase & Company's audit of McElwain's balance sheet of April thirtieth nineteen twenty-one and hereby comfirm paragraph ten of agreement reached in Chicago May eleventh.

International Shoe Company, by F. C. Rand, President.

Chg. International Shoe Co. Gen'l Expence A/C.

RESPONDENT'S EXHIBIT No. 9

May 14th, 1921.

Mr. J. P. McElwain, President W. H. McElwain Company, Boston, Mass.

DEAR MR. MCELWAIN: We enclose copy of telegram sent Mr. Storrow today as follows:

"We accept Harvey S. Chase & Company's audit of McElwain's balance sheet of April thirtieth nineteen twenty one and hereby confirm paragraph ten of agreement reached in Chicago May eleventh."

[fol. 625] This was sent after you had read to me over the phone the comments of Harvey S. Chase & Company on your statement of April 30th, 1921 and after you had stated to me on the phone that McElwain Company would guarantee the personal accounts shown on the statement, aggregating $218,846.71. In arriving at this net figure, I understood you to say that the personal accounts in your "Receivables," as shown on the statement of April 30th, were a little more than $308,000.00 but this last amount had been reduced by payments aggregating a little over $89,000.00.

I shall see you some time Tuesday.

Yours truly, International Shoe Company, by ——, President.

FCR/AA.

RESPONDENT'S EXHIBIT No. 10

May 18, 1921.

Messrs. Lee, Higginson & Co., Boston, Mass.

GENTLEMEN: In the purchase of the W. H. McElwain Company a plan has been worked out by which International 8% Cumulative Preferred Stock will be given in payment for the First Preferred 7% McElwain Stock.

In this connection may I not give to you a short statement about the record of the Peters Shoe Company and the Roberts Johnson & Rand Shoe Company prior to the formation (in December 1911) of the International Shoe Company by the merger of these two companies into the International Shoe Company.

Both companies are located in St. Louis. The Peters shoe company was organized in 1895 with a capital of $250,000. Roberts Johnson & Rand Shoe Company was organized and began operations in 1898 with a capital of $250,000.

For two or three years neither company manufactured shoes, but confined their operations wholly to jobbing shoes purchased in New England. About 1900 each company began in a small way the manufacture of welt shoes. During the next eleven years the rapid and healthy growth of shoe manufacturing in St. Louis enabled the companies to build [fol, 626] up a volume of annual sales which aggregated about $20,000,000.00. During the gradual development of sales, the capital investment of the companies was yearly increased wholly from the earnings of the companies.

At December 1911 the combined net tangible assets of the companies amounted to $8,250,000.00 which made up the initial capital investment of the International Shoe Company.

From the formation of each of these two companies up to December 1911 (when the International Shoe Company was organized) the combined average yearly earnings were about 30½% on the invested capital.

From December 1911 to November 30, 1920, the International Shoe Company has conserved its resources by paying uniform dividends and passing each year a substantial amount to the surplus account. The natural result of this policy was to constantly increase our capital investment, strengthen our finances and decrease overhead charges.

Under these favorable conditions created largely by the company's conservative and sound policy we have shown through the nine years an average yearly net earning of 30 28/100% on our capital investment.

Through good years and bad our earnings have been uninterrupted. We have striven to sell to approximately 40,000 merchants *and* constantly increasing volume of shoes, constructed of solid leather throughout, on a close margin of profit—looking always to volume for profit and with an assurance that permanent progress can be maintained only by merit.

Last year was our best year both in volume of sales and in net earnings; and I am confident that this was due largely to the fact that we were in position to quickly respond to declining values by a prompt and corresponding reduction in our shoe prices.

It is gratifying to the officers of the International Shoe Company that the five months of this year give evidence of another successful run. The earnings of our company for the first part of 1921 show net earnings at a rate in excess of $800,000 per month. This is the more encouraging because our shoes are being manufactured and distributed at prices below the competitive market, thus cre- [fol. 627] ating a widening circle of goodwill for the company's products.

In our new association with the McElwain Company our interest is very definitely and permanently fixed in New England. With a constant watchfulness of the Company's welfare, we are anxious that all the stockholders of the McElwain Company join with us in making the new and larger International Shoe Company an institution of national strength—to be operated along lines of sincere service to the public and at the same time profitable to its stockholders.

Yours truly, International Shoe Company. ——, ——, President.

RESPONDENT'S EXHIBIT No. 11

July 12th, 1921.

Mr. Stanley King, 354 Congress Street, Boston, Mass.

DEAR MR. KING: It seems to me that the McElwain stock that still stands in your name and in the names of your closest associates, especially the members of the McElwain Board, should not be transferred but should remain on the books of the company as it now stands, so that each of you will have the right under your stock ownership to vote at the stockholders' meeting on August 1st.

With regard to the stock which has been endorsed and turned in by the stockholders other than those mentioned above, in exchange for International stock, I feel that new

certificates for such stock should be issued either to Stanley King or to J. F. McElwain, Stanley King and C. J. Prescott. After this transfer shall have been made, either to you or to the group of three named above, the new stock certificate should be immediately endorsed in blank and forwarded to us.

It is my feeling that the stock ought not be transferred to the International Shoe Company or to any individual connected with the International prior to the merger with the McElwain Company. In other words, I do not feel [fol. 628] that the International Shoe Company or any officers of the International should vote in person or by proxy the McElwain stock at the W. H. McElwain Company's annual stockholders' meeting. The stockholders of the old McElwain Company should vote on the propositions to be considered at the annual meeting and the disposition of the company should be determined by the old stockholders and officers of the McElwain Company, without a technical vote from the International. Judge Rule and Mr. Baird concur with me in this opinion.

There have been turned in about 173,000 shares of the McElwain stock. If an extra transfer of this stock be made the transfer tax stamps will aggregate about $7,000.00. We wish to avoid, if possible, the expense of an additional transfer, but if the stock is in your name or in the names of the group of three, the time may come when the McElwain Company will wish to reduce its capital stock to a nominal amount and as I understand it, there will be no tax if the reduced stock certificate be issued to the same party, or if it be issued to a different party, the new and smaller certificate only will be taxed.

Broadly, it is my feeling that the present officers of the McElwain Company should work out the McElwain proposition in detail, and I feel that it would be better for the International not to participate in these proceedings.

If upon receipt of this letter this method of procedure seems wrong to you, please advise me promptly by wire.

Enclosed you will find instructions to the Old Colony Trust Company to transfer the McElwain certificates in accordance with instructions from you.

Yours truly, —— ——.

FCR/AA.

RESPONDENT'S EXHIBIT No. 12

Telegram

St. Louis, Mo., Dec. 8, 1921.

Stanley King, 354 Congress St., Boston, Mass.

Since International was organized we have made all shoes [fol. 629] on a fixed standard of quality for materials regardless of market fluctuations and have bought materials to that standard (stop) In our judgment any other policy is dangerous and wholly unsound (stop) Will Eastern factories cooperate with us one hundred per cent in this policy beginning December ninth (stop) Please wire answer.

F. C. Rand.

Chg. International Shoe Co. Gen'l Expense A/C.

RESPONDENT'S EXHIBIT No. 13

December 9th, 1921.

W. H. McElwain Co., 354 Congress Street, Boston, Mass.

Attention Mr. Stanley King

DEAR MR. KING: We confirm our telegram of yesterday:

"Since International was organized we have made all shoes on a fixed standard of quality for materials regardless of market fluctuations and have bought materials to that standard (stop) In our judgment any other policy is dangerous and wholly unsound (stop) Will Eastern factories cooperate with us one hundred per cent in this policy beginning December ninth (stop) Please wire answer.

F. C. Rand."

To which you replied as follows:

"Will cooperate absolutely (stop) Please advise Prescott Matless Bennett as to application of policy (stop) Assume you appreciate temporary effect on profits Eastern Branch.

Stanley King."

Mr. Matless has left St. Louis, but we have discussed this matter fully with Messrs. C. J. Prescott, Bennett, Talbot and our unanimous conclusion is that the above policy is the only one on which the International Shoe Company can continue to operate successfully.

It is our understanding, and we have tried to make it clear to the Eastern representatives who are in St. Louis today that when a specific sample is made up by any factory of the International Shoe Company, that sample shall [fol. 630] definitely and permanently establish the quality of the shoes to follow that sample as long as that specific shoe is being offered for sale. This standard of quality to be fixed and unchangeable regardless of market fluctuations.

It was agreed in our meeting this morning that no one in this Company has a right to modify or change in any way this broad policy, and that if by chance the policy should be disregarded in any factory, the situation should be met by immediately closing down that factory until we could get the management of that particular factory back on the right track, as outlined above.

We believe firmly that the same standard of quality for shoes of a given grade should obtain in both Eastern and Western factories, so that the shoes may be easily interchangeable and that both the East and the West may understand more fully the classifications and operations of each other.

We are sure of your willingness to co-operate absolutely in any plan in which the vital interests of all of us are bound up. From my standpoint, I believe that to adopt and follow a policy other than outlined above would eventually close the doors of the International Shoe Company and all of its factories. It might take five years, ten years, twenty years, or more, but I believe that eventually we could not survive the bad effects of a variable and changing standard of quality.

Now that this concrete question is up for discussion, I am sure that there could be no difference between the ideas of the Eastern Branch and the Western Branch. What all of us must do is to establish in the minds of our customers absolute confidence in our merchandise, and we must merit that confidence by delivering shoes of uniform quality in good years and bad.

We believe that our prices must be kept down by low overhead costs, economical and efficient management in manufacturing and distribution—with the quality of our shoes fixed and unchangeable.

This, in our judgment, is the best way—in fact—the only way in which our business can permanently produce satisfactory profits.

I want to thank you for your telegram and I hope you [fol. 631] can inspire every man in your organization to join us in the fullest application of this policy.

Yours very truly, International Shoe Company, by —— ——, President.

F. C. R.: A. A.

RESPONDENT'S EXHIBIT No. 14

Telegram

Received at 409 North 15th Street 106A LZ 24.

SH Boston, Mass., 1216P, Dec. 9, 1921.

Frank C. Rand, President International Shoe Co., St. Louis, Mo.

Will cooperate absolutely stop Please advise Prescott Matless Bennett as to application of policy stop Assume you appreciate temporary effect on profits Eastern Branch Stanley King. 1148A.

RESPONDENT'S EXHIBIT No. 15

June 23rd, 1922.

Mr. Stanley King, 590 Atlantic Avenue, Boston, Mass.

DEAR MR. KING: You wrote me a few days ago about the low production of the Eastern factories and suggested for our consideration the removal of some of the shoes from the Western factories to the Eastern factories.

With the large percentage of the production which the West has taken from the East, it seems to me that New York and Boston and Mr. Matless ought to bring the sales up to the point where we can fill the Eastern factories.

This is the sound basis on which to operate the factories to the best advantage.

Both houses are showing a loss on last year's shipments and I cannot understand it. With the same shoes and practically the same competition which the East meets, the Western shipments are nearly 40% in excess of last year's shipment-.

Yours truly, —— ——.

F. C. R./A. A.

[fol. 632] RESPONDENT'S EXHIBIT No. 16

May 18th, 1923.

Mr. Stanley King, 590 Atlantic Avenue, Boston, Mass.

DEAR MR. KING: A few months after the consolidation of the McElwain Company with this company two representatives of the Federal Trade Commission called here and inquired about the scope of business of the two companies and the basis of the consolidation.

Mr. Jackson Johnson, Mr. D. E. Woods and Mr. Baird answered their questions and a complete oral statement was made to them of the origin and basis of the trade. Copies of the agreements between the two companies were furnished and every courtesy was shown to them.

On two other occasions an agent of the Commission has called and inquired especially about the extent of competition between the two companies. We answered all their inquiries fully and frankly and nothing in their attitude indicated that they were not satisfied or that they viewed the transaction unfavorably.

In these circumstances, your report that the Commission intends to file a proceeding against us comes as a surprise to us and prompted me to telephone you yesterday. We have never had any anxiety about the matter and are not disturbed as to the outcome of such a proceeding. At the same time, there is nearly always an unfavorable notoriety about such proceedings which we naturally would like to avoid and there may be a heavy cost in defending such a case, however groundless it may prove to be.

Some responsible officer of the Commission in the first instance determines whether a suit shall be instituted and we must assume that such officer will not want to burden his office with a hearing which can serve no public purpose and would harm us.

You are familiar, in a broad way, with the business of the two companies before the consolidation and you know how slightly they came in contact in distributing their shoes. We feel that the matter is of sufficient importance for you to see the Chairman of the Commission and get before him the broad question in such a way that he will [fol. 633] be interested in having all the facts brought before some responsible officer of the Commission and threshed out before they conclude to take action.

We are willing to appear and furnish any information they desire for this purpose.

It might be well for you to see the Commission early next week if possible, and we hope that you will be able to do so.

Yours very truly,

——— ———.

RESPONDENT'S EXHIBIT No. 17

May 24, 1923.

To the Vice-President and Board of Directors of W. H. McElwain Company, Boston, Massachusetts.

GENTLEMEN: I hereby tender my resignation as President and Director of W. H. McElwain Company, effective upon its acceptance by the Directors of the Company.

Yours very truly,

——— ———.

FCR. EJ.

RESPONDENT'S EXHIBIT No. 18

June 4th, 1923.

W. H. McElwain Company, 590 Atlantic Avenue, Boston, Mass.

GENTLEMEN: We offer to buy from you all your properties and assets, real, personal and mixed, tangible or

intangible, of any and all descriptions, whether carried on your books as valuable assets or otherwise, upon the basis outlined hereinafter. This offer to buy shall be open for your acceptance until 12 o'clock noon Eastern time on Wednesday, June 13th, 1923.

We offer to pay to you in cash the sum of $4,063,125.89 for the aforesaid properties and in consideration of the terms and conditions hereinafter set forth.

The sum of $4,063,125.89 is arrived at by taking the total net values of your properties and assets as shown by your books and by an audit thereof made by Marwick, Mitchell & Company as of April 30th, 1923 ($2,563,125.89), and adding thereto the sum of $1,500,000.00.

[fol. 634] As a further consideration for said properties and assets we will agree to act as trustees in liquidation for you and in your behalf administer the liquidation of all lawful accounts, claims and demands of any and all natures which may exist or which may arise against your company.

We will further agree to assume and to pay any and all lawful accounts, claims and demands that now exist or which may arise against your company, when the same may become due and payable.

Upon acceptance you will agree to make such warranty deeds, conveyances, bills of sale, assignments and transfers covering the properties to be sold as may be necessary to transfer title to us; also that such contracts, privileges, licenses ,exemptions and other things or benefits now vested in or enjoyed by you but which in their nature are not assignable or which for any reason cannot be assigned immediately, will be held in trust by you for our benefit and you will hereafter manage and dispose of the same subject to our control and direction.

Such claims and demands as you may have against others, whether now in litigation or hereafter litigated shall be prosecuted in your name, for our benefit. We will agree to assume all expenses which may accrue on account of such litigation.

You will further agree to sell to us for the sum of $1.00 at any time the W. H. McElwain Company may be dissolved or as soon thereafter as is lawful, the sole right to use the name W. H. McElwain Company.

You agree to give to us a statement under oath, showing the names and addresses of all your creditors on the date

of your acceptance of this offer, together with the amount due each and the date when due, and will also deliver to us written waivers made by substantially all of your creditors of their rights under the Bulk Sales laws of the States of Massachusetts, New Hampshire, Vermont, New York, Ohio, Illinois, California, and Missouri, and the Republic of Argentine.

Transfer of title of all the properties as aforesaid and payment therefor shall be made on or before July 2nd, [fol. 635] 1923, provided that if it is impossible for you to make such transfer of title on or before July 2nd, 1923, a reasonable extension of time will be granted by us.

If your stockholders accept this offer, we shall require a certified copy of the minutes of the stockholders meeting in which the acceptance is made and certified copies of the minutes of your directors meeting or meetings in which the various transfers, conveyances, etc. are approved.

If your stockholders accept this offer, immediately thereupon you will notify us thereof and we will embody the pertinent terms and conditions of this letter into the form of a contract for purchase and sale to be executed by your and our proper officers.

Yours truly, International Shoe Company, by ——, President.

RESPONDENT'S EXHIBIT No. 19

June 4, 1923.

W. H. McElwain Company, Boston, Massachusetts.

GENTLEMEN: We offer to buy from you all your properties and assets, real, personal and mixed, tangible or intangible, of any and all descriptions, whether carried on your books as valuable assets or otherwise, upon the basis outlined hereinafter. This offer to buy shall be open for your acceptance until 12 o'clock noon Eastern time on Wednesday, June 13, 1923.

We offer to pay to you in cash the sum of $16,537,821.91 for the aforesaid properties and in consideration of the terms and conditions hereinafter set forth.

The sum of $16,537,821.91 is arrived at by taking the values of your properties as shown by your books and by

an audit thereof made by Marwick, Mitchell & Company, as of April 30, 1923 ($15,037,821.91) and adding thereto the sum of $1,500,000.00.

The offer is upon the condition that you agree that we shall assume none of your liabilities, that you will liquidate all your liabilities in your own way and without cost to us, that the properties sold to us shall be free from all encum- [fol. 636] brances, liens, etc., except such mortgages, rights of way, easements or the like as may exist of record or as may be hereafter specifically assumed by us.

Upon acceptance you will agree to make such warranty deeds, conveyances, bills of sale, assignments and transfers covering the properties to be sold as may be necessary to transfer title to us; also that such contracts, privileges, licenses, exemptions and other things or benefits now vested in or enjoyed by you but which in their nature are not assignable or which for any reason cannot be assigned immediately, will be held in trust by you for our benefit and you will hereafter manage and dispose of the same subject to our control and direction.

Such claims and demands as you may have against others, whether now in litigation or hereafter litigated shall be prosecuted in your name, for our benefit. We will agree to assume all expenses which may accrue on account of such litigation.

You will further agree to sell to us for the sum of $1.00 at any time the W. H. McElwain Company may be dissolved or as soon thereafter as is lawful, the sole right to use the name W. H. McElwain Company.

You agree to give to us a statement under oath, showing the names and addresses of all your creditors on the date of your acceptance of this offer, together with the amount due each and the date when due, and will also deliver to us written waivers made by substantially all of your creditors of their rights under the Bulk Sales laws of the states of Massachusetts, New Hampshire, Vermont, New York, Ohio, Illinois, California and Missouri, and the Republic of Argentine.

You will agree to hold us harmless and indemnified from any and all liability on account of any direct or contingent obligations of yours, arising on account of any business, transaction, affair, incident or condition existing or tran-

spiring in, or during the operation of, the various plants and properties before the date of transfer of the properties to us, whether such obligation may be due at the date of transfer of title or may accrue thereafter.

We will agree to hold you harmless and indemnified from [fol. 637] any and all liability on account of any direct or contingent obligations of ours, arising on account of any business, transaction, affair, incident, or condition existing or transpiring in, or during the operation of, the various plants and properties after the date of transfer of the properties to us, including all liability on account of any business done or conditions existing under any contracts or agreements which are assigned by you to us, or performed by you for us after the date of transfer of title.

Transfer of title of all the properties as aforesaid and payment therefor shall be made on or before July 2, 1923, provided that if it is impossible for you to make such transfer of title on or before July 2, 1923, a reasonable extension of time will be granted by us.

If your stockholders accept this offer, we shall require a certified copy of the minutes of the stockholders meeting in which the acceptance is made and certified copies of the minutes of your directors meeting or meetings in which the various transfers, conveyances, etc., are approved.

If your stockholders accept this offer, immediately thereupon you will notify us thereof and we will embody the pertinent terms and conditions of this letter into the form of a contract for purchase and sale to be executed by your and our proper *proper* officers.

Yours truly, International Shoe Company.

RESPONDENT'S EXHIBIT No. 20

June 12th, 1923.

Upon motion by Mr. Moreno, duly seconded and unanimously carried, the following resolution was adopted:

Resolved that Mr. Rand as President and Mr. Sudholt as Secretary be and are hereby authorized to execute for and in behalf of the Company the following contract for purchase of the properties of W. H. McElwain Company,

and to do all things and take such steps as may be necessary to carry out the terms of said contract. The contract in words and figures is as follows:

"This agreement entered into this — day of June, 1923, [fol. 638] by and between W. H. McElwain Company, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter for brevity referred to as Grantor, and International Shoe Company, a corporation duly organized and existing under the laws of the State of Delaware, hereinafter for brevity referred to as the Grantee, Witnesseth:

"For and in consideration of the sum of $4,063,125.89 paid by the Grantee to the Grantor, receipt whereof is hereby acknowledged, the Grantor does hereby sell, convey and assign to Grantee all of the properties and assets of Grantor of any and all descriptions, real, personal and mixed, tangible and intangible, whether carried upon the books of Grantor as valuable assets or otherwise.

"Grantor agrees to execute and deliver to Grantee as speedily as may be possible all necessary warranty deeds, conveyances, assignments and transfers covering the properties hereby sold as may be necessary to transfer the properties and vest the title thereto in Grantee.

"Grantor further agrees that all contracts, leases, subleases, privileges, licenses, exemptions and other things or benefits now vested in and enjoyed by it but which in their nature are not assignable or which for any reason cannot be immediately assigned or to which a third party may refuse consent to assignment, will be held by it in trust for Grantee to be managed and disposed of subject to the control and direction of Grantee.

"Such claims and demands as now exist or may hereafter arise, whether now in litigation or hereafter to be litigated shall be prosecuted in the name of the Grantor but for the benefit and at the expense of Grantee.

"Grantor further agrees that at the time of dissolution of W. H. McElwain Company or as soon thereafter as may be lawful the sole right to the use of the firm name W. H. McElwain Company shall be conveyed to and vest in Grantee.

"Grantee agrees to assume and to pay any and all lawful accounts, claims, and demands that now exist or that

may arise against the Grantor, when the same may become due and payable.

"It is further agreed that the liquidation of the affairs [fol. 639] of the Grantor shall be handled by its present officers until July 31st, 1923, the Grantee affording, without cost to Grantor, such assistance, information and services as may be requested by Grantor or its officers. Grantee, as a further consideration herein, agrees that on and after August 1st, 1923, it will assume the responsibility for the further liquidation of the affairs of Grantor and will administer the same without cost to Grantor.

"Grantor having furnished Grantee with waivers from a sufficient number of its creditors under the several Bulk Sale Laws mentioned in Grantee's offer to buy, dated June 4th, 1923, further obligation of Grantor under that section of the said offer is hereby waived by Grantee.

"In witness whereof, the parties hereto have caused these presents to be signed in their corporate names by their authorized officers, the day and year first above written.

W. H. McElwain Company, by —— ——, President. Attest: —— ——. International Shoe Company, by —— ——, President. Attest: —— ——, Secretary."

RESPONDENT'S EXHIBIT No. 21

Memorandum of agreement between International Shoe Company, a body corporate incorporated under the laws of the State of Delaware, with head office at the City of St. Louis, in the State of Missouri, and represented and acting by Stanley King of the City of Boston, Massachusetts, duly authorized for the purposes hereof by the said Company, Party of the First Part, hereinafter called the Vendor, and Bennett, Limited, a body politic and corporate with head office at the Village of Chambly Canton, in the Province of Quebec, Canada, acting and represented by Pierre E. Bonin its Vice-President, Party of the Second Part, hereinafter [fol. 640] called the Purchaser, Witnesseth:

The Vendor hereby sells, transfers and assigns to the Purchaser the following shares in W. H. McElwain Com-

pany a body corporate with head office in the City of Boston, Massachusetts, 69,946 shares of first preferred stock and 491 shares of common stock.

The said Vendor further hereby names, constitutes and appoints the said Bennett Limited or any of its officers, its attorney for the purposes of having the said shares transferred on the books of the said W. H. McElwain Company to the Purchaser.

In consideration for the said transfer, the Purchaser binds and obliges itself to pay the Vendor the sum of Four Million and sixty-one thousand and ninety four dollars and fourteen cents ($4,061,094.14).

In Witness whereof the parties hereto represented as aforesaid have signed these presents as of the Fifteenth day of June in the year One thousand nine hundred and twenty three.

International Shoe Company, Party of the First Part, by Stanley King, Bennett, Limited, Party of the Second Part, by Pierre E. Bonin, Vice-President.

Copy. 5/28/24.

RESPONDENT'S EXHIBIT No. 22

W. H. McElwain Company, Makers of Shoes,
590 Atlantic Ave., Boston 8

February 20, 1923.

Mr. R. E. Blake, International Shoe Co., 1501 Washington Ave., St. Louis, Mo.

DEAR MR. BLAKE: I assume that we shall ultimately wish to liquidate and dissolve the corporation of W. H. McElwain Company and transfer the Eastern business directly to International Shoe Company. The question of when we do this is primarily a question of expense, in which taxes play the most important part. I should now [fol. 641] like to make some preliminary estimates on the relative cost of taxes under the present form of corporate organization as compared with what the taxes would be if the Eastern business were operated directly by the International Shoe Company. These estimates should be di-

vided by states: New York, Massachusetts, and New Hampshire. It is possible that we might wish to make a transfer in New York and Massachusetts before we make it in New Hampshire because of the tax exemptions in New Hampshire on Manchester building No. 11, Nashua, and Keene, which expire 1926, 1927, and 1930, respectively.

Will you let me know whether you think it would be better to have these estimates made in your office in St. Louis or in Mr. Warren's office in Boston? It might be less expensive to have them made in your office and to have them checked over by Mr. Warren to see if he has any comments on them.

When I have these estimates, I shall work out some suggestions as to the course to pursue, which we can then consider from various points of view.

Yours very truly, Stanley King.

RESPONDENT'S EXHIBIT No. 23

April 9th, 1921.

GENTLEMEN: Some matters pertaining to our discussion of yesterday have occurred to me that I feel I should like to have, if you would kindly furnish me the information. It will enable me to arrive at a somewhat more definite conclusion when I come East to discuss the matter further with you.

The figures in which I would be interested would be as nearly as possible just what your present statement would show in the way of assets, including the main items as cash, accounts receivable, merchandise and fixed assets, against it, liabilities, borrowed money and merchandise, showing approximately about how the profit and loss account will stand with figures that you think would be indicated by an inventory taken at this time or, say, May 31st, applying, of course, the market value to the merchandise on hand.

These figures I must necessarily know before I can [fol. 642] make a very definite proposition and of course would understand that they are only tentative, subject to revision that actual inventories might indicate.

It is needless to say that these figures will be considered as strictly confidential and I trust you may see your way clear to give me this information as quickly as possible.

Very sincerely, —— ——.

RESPONDENT'S EXHIBIT No. 24

W. H. McElwain Company, Makers of Shoes, General Offices 354 Congress Street, Boston

April 13, 1921.

In reply please refer to JFM.
Confidential.

Mr. Jackson Johnson, International Shoe Company, St. Louis, Missouri.

DEAR MR. JOHNSON: We are very glad to give you the information requested in our letter of April 9th and are enclosing:

1. Consolidated Balance Sheet as of February 28, 1921, which is the latest Consolidated Balance Sheet on our books.

2. Statement of earnings and Surplus for the past ten years, drawn in a similar manner to the analysis you sent us of the International Shoe Company.

3. Copy of Prospectus issued a year ago by Messrs. Lee, Higginson and Company at the time they sold for us $2,500,000 of our First Preferred Stock.

The following comments are pertinent in connection with the figures we are handing you:

a. The net profits of the corporation have been purposely understated in our annual reports and in the table which we enclose, (taken from our annual reports), by first deducting from the profits the amount which we have distributed to the management of the various distributing houses in the form of profit sharing. This amount has been substantial and as we have no contract commitments for profit sharing in our distributing houses, this

[fol. 643] amount is essentially a part of the net profits of the corporation. Our profits have been thus understated because of our desire to be extremely conservative in this respect.

b. Debts on February 28th were at the peak. They will be materially decreased at the end of our fiscal year,—May 31st.

c. Our Plant Account was appraised on June 1, 1919, by Messrs. Thompson & Black, Engineers, of New York City. The appraised value less depreciation gives a sound value of approximately $2,000,000 more than the figure at which our plants are carried on the balance sheet.

d. Included in our Securities Account are stocks in building companies owning factories which we occupy. A reappraisal at sound value would show at least $150,000 higher value than these items are carried on our books.

e. We have marked down our finished shoes from time to time to meet the market. Were we to bring our assets to market in our statement of February 28th enclosed and had we at that time set up reserves to cover depreciation on the balance remaining undelivered on contracts for merchandise the Net Quick Assets appearing on the statement of February 28th would be reduced approximately $3,000,000.

Our First Preferred Stock as we advised you is listed, is owned by investors, and is now selling at about 92. Our Second Preferred Stock is owned almost altogether by members of the organization and their families. Its dividend record is included in the schedule which we enclose. It is selling at par. Our Common Stock has a par value of $50.00 a share and is owned by the officers and operating executives of the company. In January 1920, we felt it wise to sell a limited amount of this stock, amounting to $500,000, in the investment market at the price of $80.00 a share. The lowest sale which has recently come to our attention is at $55.00 a share.

In the distribution of our product about 40% is sold through our own distributing houses. The balance is sold to independent wholesalers and to large retail merchants located in the cities throughout the country and is sold di-
[fol. 644] rect from the factory. Last year the volume of

our sales to large retailers amounted to $7,000,000 at a selling expense of less than 1%. We believe this is a decided benefit to us in keeping us up-to-date in style and quality. The possibilities of further development in this field are large as we believe distribution through chain stores and large retail merchants is growing relatively from year to year. This $7,000,000 of business was sold last year by seven salesmen.

Our sales to independent wholesalers was made at a cost of approximately one-quarter of one per cent.

In analyzing the costs of our distributing houses we are impressed with the fact that they compare very favorably with your costs for the same items. For the year ending May 31, 1920, the sales of our New York House amounted to something over $15,000,000 and the cost of doing the business, included those items which we believe you include, was 6 4/10%. During the same year the sales of our Columbus House, which is one of our smaller houses, amounted to about $1,250,000 and the expense ratio 7.77%. Our prices and terms for merchants throughout the country are identical from our distributing houses and we make no exceptions.

We also have a separate stock department in Boston doing a business of approximately $2,000,000. This department is designed to dispose of regular stock shoes and they sell as well factory fillers, and such cancelled and damaged shoes as we may have. The cost of distribution in this department including selling, organization and labor, and operating and general expenses, but not including interest and freight is 1 1/10%. The manager of this department sells the entire product on a salary. All shoes are sold from stock.

You are already familiar with our manufacturing methods. One of our recent developments in this division in securing rapid turnover will however interest you. We are now operating two of our factories on a delivery schedule of six to seven days for Men's Welts and five to six days for Men's Nailed Shoes. This schedule of course gives a merchandise turnover which is almost unique. Our tanning capacity in both sole leather and upper leather we have already discussed with you.

[fol. 645] As I explained to you in St. Louis, during the Spring of 1920 orders actually booked plus space con-

tracted for greatly exceeded our total production up to December 31, 1920. Business in the East became demoralized in August and September. Cancellations were heavy, resulting in our having a large inventory rather than the small one which we anticipated, based on actual orders booked. The production of Men's shoes in the East during the past two or three months has been decidedly subnormal. The tide has turned, however, and the facts indicate that production will increase from this time on. Shipments from our distributing houses of our own products during the past month have been excellent. We have outlined our Fall campaign and our sales force seem to be extremely enthusiastic and confident of good results.

You will recall that in our conversation you made some allusions to the cost per pair of freight from Boston to St. Louis and Kansas City. On investigation we think that the estimates which you made were high as our figures indicate the following per pair costs:

Freight Cost—Boston to St. Louis

	Per pair approx.
Men's	.06
Boys'	.045
Women's	.04
Misses' & Children's	.03

May I suggest that when you come East you bring a copy of the charter of your corporation with any amendments and the by-laws with amendments if any. You will find the essential provisions of our bylaws at the beginning of the bound volume which Mr. King left for you. I should also be glad if you could let me know either when you arrive or by letter previously the exact shares of common stock which will be outstanding in your Delaware Corporation at the conclusion of the reorganization from your Missouri charter to your Delaware charter. This of course does not appear in the Auditor's Report which you handed me which was made up before the re-organization.

My associates feel that the plan which we have discussed [fol. 646] is fundamentally sound and they will be pleased to discuss it with you in detail. I wonder if it would be possible for you to be here Tuesday or Wednesday, April

19th or 20th. Mr. James J. Storrow is leaving Thursday, April 21st, and it seems to me quite necessary to have him here during our discussion.

Yours very truly, J. F. McElwain.

[In pen:] Please wire when you expect to arrive.

RESPONDENT'S EXHIBIT NO. 25

W. H. McElwain Company

Consolidated Balance Sheet, February 28, 1921

Assets

Quick Assets:			
Cash		$1,975,224.83	
Receivables		9,635,355.86	
Merchandise		14,764,713.14	
Prepaid Items		519,163.58	
			$26,894,457.41
Securities			470,041.58
Plant			4,589,906.32
Total			$31,954,405.31

Liabilities

Debts:			
Notes		$15,756,500.00	
Accounts		1,574,096.89	
			$17,330,596.89
Capital Stock:			
1st Preferred	$7,140,000.00		
*Less purchased for retirement	114,100.00		
		7,025,900.00	
2nd Preferred	2,700,000.00		
*Less Treasury Stock	100,000.00		
		2,600,000.00	
Common	3,500,000.00		
[fol. 647] *Less Treasury Stock	5,200.00		
	3,494,800.00		13,120,700.00
Reserves			217,063.92
Surplus			1,286,044.50
Total			$31,954,405.31

*NOTE.—In final analysis this stock taken at par value resulting in reducing amount Capital Stock by $2519, which amount was transferred to Reserves.

W. H. McElwain Company

Report of Treasurer to Board of Directors, Covering Nine Months' Operations

Submitted April 12, 1921

Income & Surplus Account:

Undivided Surplus May 31, 1920		$3,888,440.73
Add: Net earnings nine months ended February 28, 1921 (including Wholesale Houses)		1,958,305.48
		$1,930,135.25
Deduct:		
Dividends First Preferred	369,590.75	
" Second "	117,000.00	
" Common	157,500.00	
		644,090.75
Undivided Surplus, February 28, 1921		$1,286,044.50

Comparative Sales Fiscal Year to Date (Nine Months Ended February 28th)

1920	$33,270,020.00
1921	19,300,366.00

RESPONDENT'S EXHIBIT No. 26

International Shoe Company, 1501 Washington Avenue

Executive Office

St. Louis, Mo., June 16th, 1921.

To Our Stockholders:

It has always been the policy of your officers and directors to keep you advised as to the important develop- [fol. 648] ments in your Company and this letter is written for the purpose of informing you concerning the basis of the consolidation with the W. H. McElwain Shoe Company and Kistler, Lesh Tanning Company, both of which, in our judgment, will be important factors in the future of the International Shoe Company.

For more than three years we have not been able to make as many shoes as our customers wished to buy from us. Our sales have grown more rapidly than our manufacturing capacity and our customers, therefore, have not received

as prompt shipments and as good service as we desire to give them.

The present capacity of the International Shoe Company's Western factories is a maximum of 80,000 pairs of shoes daily. It has taken twenty years to build up this production. The development of the manufacture of shoes in this section is necessarily slow because we have not only to build factories, but also to build and educate shoemakers. It has been estimated that a minimum of three years is required from the beginning of the construction of a factory before that factory can be producing shoes of a standard quality and of maximum quantity. Although during this fiscal year we have produced more shoes than in any other corresponding period in the history of the Company, we have found it impossible to increase our production in keeping with the growth of our sales. This is not a general condition in the shoe business today, for we believe that the average production of New England shoe manufacturers has not been much above 50% of their capacity for the last twelve months' time.

With all of these facts before us, the consolidation with the W. H. McElwain Company and Kistler, Lesh & Company seems very desirable.

The W. H. McElwain Company of Boston, Massachusetts was organized in 1895 and has developed into the largest shoe manufacturing company of New England. For years they have been recognized as the leading manufacturers of medium price men's and boys' welt shoes. They have an actual manufacturing capacity of 38,000 pairs of shoes a day and have an organization well equipped to make [fol. 649] economically shoes of the type on which our business has been built.

This extensive business has been in New York, Pennsylvania and in the North Atlantic Coast States, including New England. They have also enjoyed a large business from retailers in large cities, and a part of their production has been sold to the jobbing trade. They have been consistent money makers with the exception of last year, in which they suffered loss, due largely to an overwhelming volume of cancellation of shoe orders, occasioned by a declining market.

The officers and directors of the McElwain Company are young, active and aggressive, and they are men of high character and business ideals.

The consolidation of the McElwain Company with the International has been effected by the issue of International no par value Common Stock at $30.00 per share and International Preferred Stock at $109.00 per share in exchange for McElwain Common Stock on the basis of 50% of its par value; McElwain Second Preferred on the basis of 75% of its par value and McElwain First Preferred on the basis of 82½% of its par value.

Kistler, Lesh & Company was acquired for $500,000.00 in cash and $1,300,000.00 in Common and Preferred Stock of the International Shoe Company at the market value. It is an old and well established sole leather tanning company, with two tanneries in Pennsylvania, one in North Carolina and a tanning extract plant also located in North Carolina. They are considered among the best sole leather tanners in America. We have used their sole leather for years and know and appreciate its quality.

The importance of making more uniform the quality of our shoes by the production of our own leather is, in our opinion, a step in the right direction and will further add to the popularity of the product of this Company.

The International Shoe Company has conserved its resources by paying uniform dividends and passing each year a substantial amount to the surplus account. The natural result of this policy was constantly to increase our capital investment, strengthen our finances and decrease overhead [fol. 650] charges. When many industries were needing financial assistance, the International Shoe Company had fortified itself by building up a surplus that represented a capital investment and the investment of this surplus in the two companies lately acquired has met with unanimous approval of your officers and directors.

We paid for nothing except the actual, tangible values of the two companies—nothing was paid for good-will—and there has been secured to the International Shoe Company, a book profit of about $1,000,000.00 based on true values of the purchased properties as evidenced by the inventories and appraisals submitted to us when the purchases were made.

We believe that when the new properties have been thoroughly amalgamated and the plans under consideration worked out, these additions will prove profitable not only to you, but also to our new associates.

The earnings of our Company for the first six months of 1921 are quite satisfactory, with orders now on hand in sufficient quantities to keep all factories fully employed for some time to come. This is all the more encouraging because our shoes are being manufactured and distributed at prices below the competitive market, thus creating a widening circle of good-will for the Company's products.

Yours truly, International Shoe Company, by Jackson Johnson, Chairman of the Board.

[fol. 651] RESPONDENT'S EXHIBIT 27

International Shoe Company

Finished Merchandise on Hand, Orders Received, and Shipments, January 1, 1921, to May 31, 1921

	Finished merchandise on hand first of month		Orders	Shipments	Difference less carried over to next month	Shrinkage
January—1921	$6,476,000	Carried over from previous month	891,000			
		Received for shipment in January	9,962,000			
		Total orders for January	10,853,000	5,100,000	5,753,000	
					3,661,00	
						2,092,000
February—1921	$5,582,000	Carried over from previous month	3,661,000			
		Received for shipment in February	8,452,000			
		Total orders for February	12,113,000	5,280,000	6,833,000	
					4,429,000	
						2,404,000

March—1921	$4,825,000	Carried over from previous month	4,429,000			
		Received for shipment in March	7,038,000			
		Total orders for March	11,467,000	5,616,000	5,851,000	
					3,560,000	
[fol. 652]						2,291,000
April—1921	$3,867,000	Carried over from previous month	3,560,000			
		Received for shipment in April	4,973,000			
		Total orders for April	8,533,000	4,157,000	4,376,000	
					2,521,000	
						1,855,000
May—1921	$5,002,000	Carried over from previous month	2,521,000			
		Received for shipment in May	12,345,000			
		Total orders for May	14,866,000	5,722,000	9,144,000	
					6,396,000	
						2,748,000

RESPONDENT'S EXHIBIT 27—Continued

	Finished merchandise on hand first of month	Orders	Shipments	Difference less carried over to next month	Shrinkage
May—1921	Total Orders Received for shipment in above months	$42,770,000			
	Add—carried over from December, 1920	891,000			
		43,661,000			
	Less—carried over to June, 1921	6,396,000			
		37,265,000			
	Total Shipments		25,875,000		
	Total Shrinkage due to cancellations caused principally by our inability to fill the orders				$11,390,000

RESPONDENT'S EXHIBIT 28

1919.	Total Production U. S. in pairs	$331,224,000	100%	U. S. Census.
	Int. Shoe Co. " " "	16,633,815	5.02%	Record of Factory Shipments.
	McElwain Co. " " "	7,161,000	2.16%	Our Report to N. Y. Stock Exchange.
	Total Production U. S. in value	1,155,041,000	100%	U. S. Census.
	Int. Shoe Co. " " "	56,489,700	4.89%	Record of Factory Shipments.
	McElwain Co. " " "	24,275,000†	2.11%	Estimated.
1920.	Total Production U. S. in pairs	307,500,000	100%	Babson's Sheet—Estimated.
	Int. Shoe Co. " " "	17,387,438	5.65%	Record of Factory Shipments.
	McElwain Co. " " "	7,410,000	2.41%	Our Report to N. Y. Stock Exchange.
	Total Production U. S. in value	1,218,000,000	100%	Babson's Letter 5/21.
	Int. Shoe Co. " " "	73,471,000	6.03%	Record of Factory Shipment.
	McElwain Co. " " "	31,270,000	2.56%	Estimated.
1921.	Total Production U. S. in pairs	286,771,101	100%	U. S. Census.
	Int. Shoe Co. (Solely) " "	21,049,171	7.34%	Record of Factory Shipments.
	McElwain Co. (Solely) " "	3,819,255	1.33%	" " " "
	Total Production U. S. in value	867,475,000	100%	U. S. Census.
	Int. Shoe Co., (Solely) " "	57,945,500	6.68%	Record of Factory Shipments.
	McElwain Co. (Solely) " "	10,541,100*	1.22%	Estimated.
1922.	Total Production U. S. in pairs	323,876,459	100%	U. S. Census.
	Int. Shoe Co. (Solely) " "	30,350,903	9.37%	Record of Factory Shipments.
	McElwain Co. (Solely) " "	7,594,528	2.34%	" " " "
	Total Production U. S. in value	881,000,000	100%	Babson's Telegram.
	Int. Shoe Co. (Solely) " "	72,677,300	8.25%	Record of Factory Shipments.
	McElwain Co. (Solely) " "	17,761,700	2.02%	" " " "
1923.	Total Production U. S. in pairs	351,114,273	100%	Babson's Sheet.
	Int. Shoe Co. (Solely) " "	34,219,988	9.75%	Record of Factory Shipments.
	McElwain Co. (Solely) " "	8,089,548	2.30%	" " " "
	Total Production U. S. in value	931,000,000	100%	Babson's Telegram.
	Int. Shoe Co., (Solely) " "	84,784,500	9.11%	Record of Factory Shipments.
	McElwain Co. (Solely) " "	24,561,800	2.64%	" " " "

† 1919—Estimated Value McElwain—actual pairs taken from our report to N. Y. Stock Exchange, times average value for International Shoe Co. of 3.39 = $24,275,000.

* 1921—Estimated Value McElwain—pairs from letter W. I. Shaw. See record of factory shipments, times average value for International Shoe Co. of 2.76 = $10,541,100.

[fol. 654] RESPONDENT'S EXHIBIT 29

1919.	Int. Shoe Co. shoe sales in value	$61,247,000	Our Report to N. Y. Stock Exchange.
	McElwain Co. " " " "	37,103,000	" " " " " "
1920.	Int. Shoe Co. sales in value	75,617,000	Our Report to N. Y. Stock Exchange.
	McElwain Co. " " "	49,454,000	" " " " " "
1921.	Int. Shoe Co. sales (Solely) in value	64,843,000	Balance Sheet Detail.
	McElwain Co. " (Solely) " "	24,984,000	Our Report to N. Y. Stock Exchange.
	McElwain Co. " to Int. Shoe Co.	2,652,738	Record of Factory Shipments.
1922.	Int. Shoe Co. sales (Solely) in value	83,590,000	Balance Sheet Detail.
	McElwain Co. " (Solely) " "	13,776,000	" " "
	McElwain Co. " to Int. Shoe Co.	10,212,000	Record of Factory Shipment.
1923.	Int. Shoe Co. sales (Solely) in value	94,897,000	Balance Sheet Detail.
	McElwain Co. " (Solely) " "	15,025,000	" " "
	McElwain Co. " to Int. Shoe Co.	10,096,000	Record of Factory Shipment.

[fol. 655] RESPONDENT'S EXHIBIT 30

Annual Report to Stockholders of W. H. McElwain Company

354 Congress Street, Boston,
Massachusetts, July 26, 1920.

To the Stockholders:

The Board of Directors submits the following report of the business of W. H. McElwain Company for the fiscal year ended May 31, 1920, together with a statement of the financial condition of the Company at that date:

Income Account

Undivided Surplus May 31, 1919			$2,456,225.69
Add earnings for fiscal year ended May 31, 1920, after deducting depreciation, upkeep and repairs, but before deducting the profit-sharing distribution		$4,079,625.83	
Less Profit-Sharing Distribution		567,441.25	
			3,512,184.58
			$5,968,410.27
Deduct:			
Reserve for Federal Income and Profits Taxes		940,000.00	
Special Contingent Appropriation		123,468.79	
Dividends:			
First Preferred	349,375.00		
Second Preferred	189,000.00		
Common	480,000.00		
	$1,018,375.00		
Less dividends received and adjusted on stock bought for retirement and profit sharing	1,874.25		
		1,016,500.75	
			2,079,969.54
Undivided Surplus May 31, 1920			$3,888,440.73

[fol. 656] RESPONDENT'S EXHIBIT 31

Balance Sheet May 31, 1920

Assets

Quick Assets:		
Cash	$761,033.42	
Receivables	11,122,802.11	
Merchandise	14,038,084.18	
Prepaid Items	269,729.74	
		26,191,649.45
Securities		386,280.93
Plant Account		4,144,239.17
		$30,722,169.55

Liabilities

Current Liabilities: Debts			$12,687,728.82
Capital Liabilities:			
First Preferred Stock	7,390,000		
Purchased for retirement	250,000		
		7,140,000.00	
Second Preferred Stock		2,500,000.00	
Common Stock		3,500,000.00	
			13,140,000.00
Reserves for Federal Taxes and Dividends			1,006,000.00
Surplus			3,888,440.73
			$30,722,169.55

The balance sheet and other information contained in this report include the assets, liabilities, and other financial facts of the Company's manufacturing and supply departments and of the distributing departments operated under the names of McElwain, Morse & Rogers, New York; McElwain, Hutchinson & Winch, Boston; McElwain-Chicago Company, Chicago; McElwain-Columbus Company, Columbus, Ohio; and McElwain-Young Shoe Company, San Francisco.

[fol. 357] RESPONDENT'S EXHIBIT No. 32

W. H. McElwain Co.

Consolidated Balance-sheet, May 31, 1921

Assets

Quick Assets:			
Cash		$1,893,390.01	
Receivables	$6,394,246.83		
Less Reserve for Credit Loss	140,676.02		
		6,253,570.81	
Advances to Subsidiaries		2,197,702.83	
Merchandise		8,775,822.57	
Prepaid Items		283,229.66	
			$19,403,715.88
Securities			487,153.43
Plant:			
Book Value, June 1, 1920		$4,144,239.17	
Additions at Cost to May 31, 1921		833,165.16	
		$4,977,404.33	
Less Depreciation for Fiscal Year		489,248.40	
			4,488,155.93
National Advertising Campaign			212,639.48
			$24,591,664.72

Liabilities

Debts:			
Notes		$13,194,000.00	
Accounts		2,686,901.42	
			$15,880,901.42
Capital Stock:			
First Preferred	$7,140,000.00		
Less Treasury	141,900.00		
		$6,998,100.00	
Second Preferred	$2,700,000.00		
Less Treasury	100,000.00		
		2,600,000.00	
Common	$3,500,000.00		
Less Treasury	5,200.00		
		3,494,800.00	
			13,092,900.00
Surplus			*4,382,136.70*
			$24,591,664.72

[fol. 658] RESPONDENT'S EXHIBIT NO. 33

W. H. McElwain Co.

Balance sheet, as at November 30, 1921

Assets

Current and Working Assets:		
Cash in Banks and on Hand		$406,025.26
Notes Receivable		2,114,858.51
Accounts Receivable		3,992,104.12
Inventories		6,222,611.25
Total Current and Working Assets		$12,735,599.14
Loans and Advances to Employees		128,174.74
Expenses Paid in Advance		48,057.96
Investments in Other Companies		92,212.50
Physical Properties		4,687,273.44
Total		$17,691,317.78

Liabilities

Current and Accrued Liabilities:		
International Shoe Company		$11,235,778.14
Notes Payable		140,500.00
Accounts Payable		2,325,216.23
Total Current and Accrued Liabilities		$13,701,494.37
Capital Stock Outstanding	$13,092,900.00	
Less—Deficit	9,103,076.59	3,989,823.41
Total		$17,691,317.78
Contingent Liabilities—Guarantee on Bank Credits		$288,000.00

RESPONDENT'S EXHIBIT No. 34

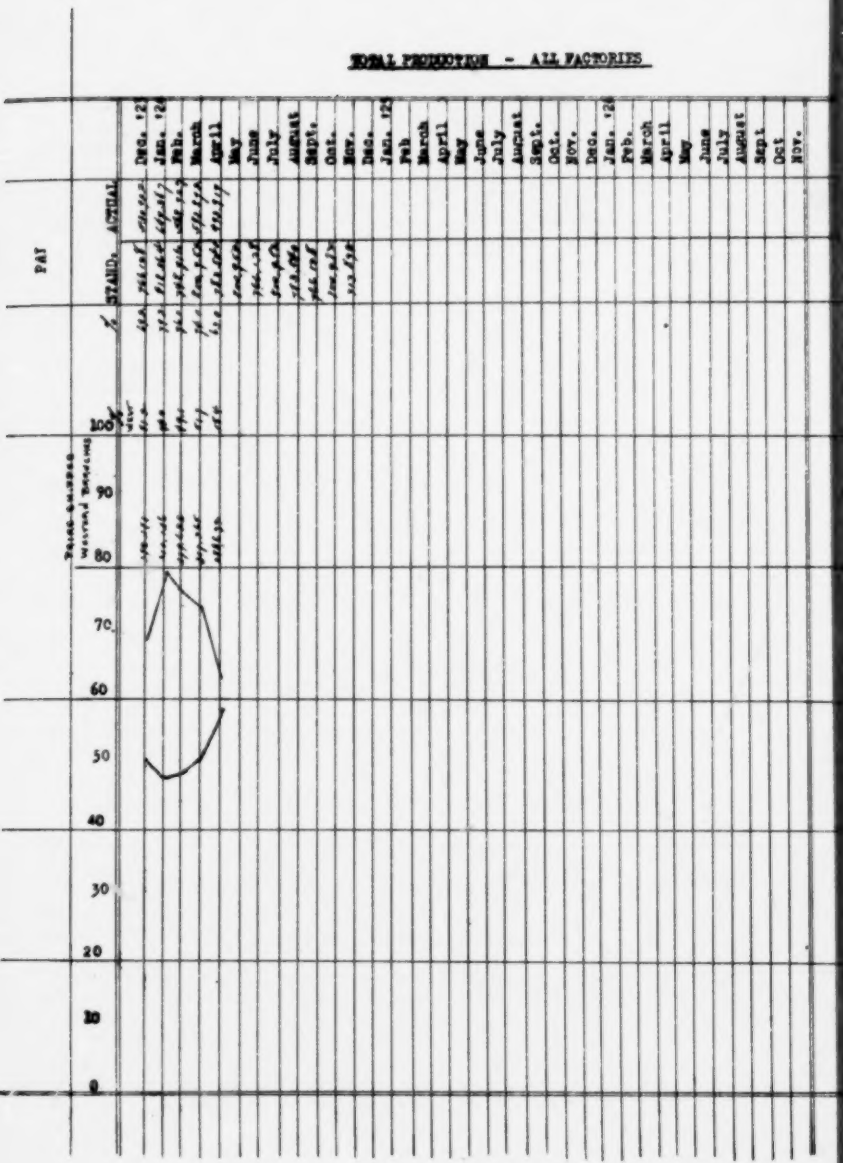
April 2, 1921.

Memorandum of Estimated Losses in Current Fiscal Year Must be Recognized in Balance Sheet of May 31, 1921

Mark Down Adjustment	949,000
Unrealized Profits	
McElwain-Barton Company	1,000,000
[fol. 659] Summit	300,000
Elkland	250,000
Merrimack	60,000
Upper Leather Hide Adjustment:	
Regular (Including N. E. Hide)	410,000
Kips	100,000
Miscellaneous Hides (Hides General)	25,000
March, April, May Operating Mfg.	500,000
Distrib.	100,000
ex. M. B.	
Shoe Mark Down	400,000
	4,094,000
M. B. applied to Consolidation	805,000
	3,289,000

RESPONDENT'S EXHIBIT No. 36.

RESPONDENT'S EXHIBIT No. 36A.



RESPONDENT'S EXHIBIT No. 35

W. H. McElwain Company

Consolidated Balance sheet, April 5, 1921

Preliminary Estimate of Condition May 31, 1921

Assets

Quick Assets:			
Cash		$1,200,000	
Receivables	$6,736,000		
Less Reserve	336,000		
		6,400,000	
Advances to Subsidiaries		447,000	
Merchandise		10,421,000	
Prepaid Items		421,000	
			$10,889,000
Securities			373,000
Plant Asset:			
Appraised Value		$9,443,000	
Depreciation		2,657,000	
Sound Value		6,786,000	
Book Value			4,665,000
Goodwill (Publicity Cost)			166,000
Ttal Assets			24,093,000

[fol. 660] Liabilities

Debts			14,112,000
Capital Liabilities:			
1st Preferred Stock	7,140,000		
Purchased for Retirement	114,000		
		7,026,000	
2nd Preferred Stock	2,700,000		
Less Treasury Stock	100,000		
		2,600,000	
Common Stock		3,500,000	
			13,126,000
Surplus			*3,145,000*
Total Liabilities			24,093,000
Estimated Net Quick Assets			$4,777,000
Estimated Ratio of Quick Assets to Debts			$1.34

NOTE.—In this statement for the first time is consolidated the statement of McElwain-Barton Company, Kansas City, of which W. H. M. Co. owns the entire Cap. Stock.

(Here follow Respondent's Exhibits Nos. 36 and 36a, side folio pages 661 and 662.)

[fol. 663] RESPONDENT'S EXHIBIT No. 37

Sales to Retail Shoe Dealers Year Ending May 31, 1921

	Location	Dozens
1	New Hampshire	30
2	Massachusetts	2,569
3	Rhode Island	104
4	Connecticut	10
5	New York	34,037
6	New Jersey	69
7	Pennsylvania	4,437
8	Maryland	4,174
9	District of Columbia	40
10	Ohio	5,015
11	Indiana	2,685
12	Illinois	5,104
13	Michigan	7
14	Wisconsin	86
15	West Virginia	805
16	Kentucky	501
17	Tennessee	1,070
18	Virginia	793
19	North Carolina	280
20	South Carolina	1,445
21	Georgia	2,437
22	Florida [missing]	536
23	Alabama	429
24	Mississippi	19
25	Louisiana	107
26	Arkansas	131
27	Missouri	5,939
28	Iowa	224
29	Oklahoma	224
30	Texas	1,664
31	Minnesota	7
[fol. 664]		
32	Utah	225
33	Colorado	49
34	Washington	7
35	Oregon	66
36	California	790
37	Newfoundland	34
38	Hawaiian Islands	1,614
		77,963

Distribution of Sales of Shoes Produced by W. H. McElwain Co. for Fiscal Year Ending May 31, 1920-1921

Shoe Sales to Houses Owned (Gross)	1920	1921
McElwain Hutchinson & Winch, Boston, Mass.	2,617,464	1,300,425
Morse & Rogers, New York, N. Y.	5,065,629	2,583,528
McElwain Columbus Co., Columbus, Ohio	1,237,284	814,837
McElwain Chicago Co., Chicago, Ill.	2,817,319	722,960
McElwain Young Co., San Francisco, Cal.	989,716	420,059
	12,727,412	5,841,809
Less 15%	1,909,113	876,272
Net Sales	10,818,299	4,965,537
Sales to Other Wholesale accounts Net	5,066,607	1,409,759
Total Net Sales to Wholesale Accounts	15,884,906	6,375,296
Total Net Sales to Independent Jobbing Accts.	7,178,661	2,901,764
Total Net Export Business	1,942,044	785,597
Total Net U. S. Government	975,469	909,771
Total Net Shipments to Retailers	4,987,821	3,029,648
Total Net Sales Rejected Damaged & Job Shoes	2,190,072	1,316,022
Grand Total Net Sales	33,158,973	15,318,098

Sales to Other Wholesale Account Fiscal Year Ending May 31, 1921

Customer	Location	Dozen
Sawyer Boot & Shoe Company	Bangor, Maine	45
Dunham Bros.	Brattleboro, Vt.	516
W. H. Walker	Buffalo, N. Y.	2,593
Hurd & Fitzgerald	Utica, N. Y.	1,954
Nath'l Fisher Co	N. Y. City	17,695
[fol. 665] T. K. Ray	Pittsburgh, Pa.	2,735
S. Halle Sons Co.	Baltimore, Md.	1,531
Adams & Ford (U. S. Rubber)	Cleveland, Ohio	784
Palmer Shoe Co.	Zanesville, Ohio	1,839
Marks & Stix	Cincinnati, Ohio	656
Crowder Cooper Co.	Indianapolis, Ind.	1,362
Barton Wheeler Shoe Co.	Kansas City, Mo.	15,453
		45,255

Distribution of Sales of Shoes Produced by W. H. McElwain Co. for Fiscal Year Ending May 31, 1920-1921

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Total Net Sales Rejected Damaged & Job Shoes	2,190,072	1,316,022
Grand Total Net Sales	33,158,973	15,318,098

Sales to Independent Jobbers, Year Ending May 31, 1921

Customer	Location	Dozens
Grimsrud Shoe Co	Minneapolis, Minn	30
Spear Bros	Baltimore, Md	27
Frank & Adler	Baltimore, Md	1,084
H. Pretzfelder	Baltimore, Md	99
Wolf Bros	Columbus, Ohio	7,757
Pilot Shoe Company	Baltimore, Md	588
[fol. 666] George D. Witt	Lynchburg, Va	1,374
Simmons Boot & Shoe Co	Toledo, Ohio	860
Baltimore Shoe House	Baltimore, Md	98
Crosby Shoe Co	Lynchburg, Va	234
J. P. Hartray	Chicago, Ill	1,026
Craddock Terry	Lynchburg, Va	1,732

Customer	Location	Dozens
R. P. Smith	Chicago, Ill	30
W. H. Miles	Richmond, Va	1,182
I. Kohlman	New Orleans, La	779
Albert Mathair	El Paso, Texas	20
Stern & Co	Richmond, Va	1,036
John Scowcroft	Ogden, Utah	382
Wear-U-Well Shoe Co	Kansas City, Mo	1,339
Stephen Putney	Richmond, Va	3,324
Emil Olcovitch	Los Angeles, Cal	24
Bellar Hess	New York, N. Y	146
Gray & Dudley	Nashville, Tenn	532
Oscules Damer Co	Chippewa Falls, Texas	6
Sely Schwab & Co	Pittsburgh, Pa	8
Cahn Mikelbury	San Francisco, Cal	772
Wenjo-Ellet-Crump	Richmond, Va	2,250
Lewis Mercantile	St. Louis, Mo	500
J. J. Schulten	Louisville, Ky	341
Friedman Schultz	Clarksdale, Miss	72
Samuels Shoe Company	St. Louis, Mo	48
Henkle Shoe Company	Evansville, Ky	90
Faucette Peavler Shoe Co	Bristol, Tenn	148
Kornman Sawyer & Co	Nashville, Tenn	152
Richardson Crockett Shoe Co	Nashville, Tenn	208
Leonard Shoe Co	Birmingham, Ala	18
Nathan Plant & Son	Cincinnati, Ohio	139
Geo. F. French	Wilmington, N. C	264
Henegar Dooley	Knoxville, Tenn	298
Junj Shoe Company	Sheboygan, Wis	18
Griggs Paxton	Roanoke, Va	302
[fol. 667] B. F. MacLeod Shoe Co	Charleston, S. C	121
J. K. Orr	Atlanta, Ga	424
Hutchinson Shoe Co	Jacksonville, Fla	566
Blumberg Shoe Co	Birmingham, Ala	679
McElroy Sloan	St. Louis, Mo	306
Goodbar Co	Memphis, Tenn	212
Haynes Henson	Knoxville, Tenn	1,098
M. C. Kiser	Atlanta, Ga	982
O. Marks	Newbern, N. C	686
Gilmers, Inc	Winston-Salem, N. C	36
Carolina Shoe Co	Columbia, S. C	337
Hurskamp Bros	Keokuk, Iowa	563
Belk Bros	Charlotte, N. C	1,832
Jeff Newberry	Huntington, W. Va	932
Betterton Wallace	Chattanooga, Tenn	432
Grambling Spalding	Atlanta, Ga	336
Charlotte Merc	Charlotte, N. C	912
Isaac Fallers	Cincinnati, Ohio	595
Lipschitz-Barack	St. Louis, Mo	684
Hunter Shoe Company	Johnson City, Tenn	295
Libby Shoe Co	Carlston, S. C	168
A. Palan	St. Louis, Mo	1,400
Aug. Wright Co	Petersburg, Va	294
Sam Levy	Nashville, Tenn	1,268
Levy Wolff	Montgomery, Ala	660
Murray-Richardson-Dibrell	Nashville, Tenn	456
Peoria Wholesale Shoe Co	Peoria, Ill	160
B. Rosenberg	New Orleans, La	1,039
American Wholesale Corp	Baltimore, Md	1,110
Dixon Bartlett	Baltimore, Md	1,802
Sears Roebuck	Chicago, Ill	2,727
Montgomery Ward	Chicago, Ill	416
A. J. Doyle Shoe Co	Chicago, Ill	84
		52,949

Customer	Location	Dozens
[fol. 668] W. L. Goodnow Co	Keene, N. H	30
United Shoe Stores	Haverhill, Mass	270
Goodnow Pearson	Gardner, Mass	8
Wm. Filene	Boston, Mass	6
S. H. Harrison	Boston, Mass	20
Traveler Shoe Co	Boston, Mass	1,321
Arthur's Shoe Shop	Boston, Mass	270
Steinwald Shoe Syndicate	Boston, Mass	24
H. H. Aronson	Boston, Mass	650
		2,569
Modern Shoe Store	Providence, R. I	104
George Levine	Hartford, Conn	10
Kress Mail Order Stores	New York, N. Y	42
Wildefeur Bros	New York, N. Y	83
Joseph Shoe Stores, Inc	Brooklyn, N. Y	320
Poehlman Shoe Co	Syracuse, N. Y	4
Gould Lee & Webster	Syracuse, N. Y	10
Shear Sharpney Shoe Store	Endicott, N. Y	8
McFarlen Clothing Co	Rochester, N. Y	6
Wm. Fischer	New York, N. Y	40
Schwartz Bros	New York, N. Y	170
Wm. Pidgeon, Sr	Rochester, N. Y	9
Gould Lee & Webster	Rochester, N. Y	22
Wm. Pidgeon, Jr	Rochester, N. Y	61
Redleins	Buffalo, N. Y	16
H. S. Bullett	Buffalo, N. Y	171
Central Shoe Co	New York, N. Y	20
I. Blyn & Sons	New York, N. Y	243
M. Krug	Brooklyn, N. Y	1,847
Moskin Bros	New York, N. Y	400
R. H. Long, Inc	Rochester, N. Y	446
Star Shoe Co	Brooklyn, N. Y	97
Sterling Shoe, Inc	Rochester, N. Y	156
Rambler Shoe	New York, N. Y	1,668
[fol. 669] S. A. Adler	New York, N. Y	318
J. G. Sattler	Buffalo, N .Y	115
G. R. Kinney Co	New York, N. Y	18,932
Frank Melville, Jr	New York, N. Y	7,599
May Shoe Co	New York, N. Y	1,234
		34,037
George Lowenthal	Paterson, N. J	31
L. Bramberger	Newark, N. J	38
		69
Dull Mercantile	Gray, Pa	10
Dull Mercantile	Bell, Pa	4
Dull Mercantile	Acosta, Pa	4
S & E Boot Shop	Pittsburgh, Pa	18
Gimbel Bros	Philadelphia, Pa	17
W. M. Laird Co	Pittsburgh, Pa	47
Ball Bros	Philadelphia, Pa	384
Louis Mark	Philadelphia Pa	2,950
Brasley Kreiger Shoe Co	Pittsburgh, Pa	49
D. Mussoff Shoe Co	Pittsburgh, Pa	54
Haines Shoe Co	York, Pa	535
Book Shoe Co	Pittsburgh, Pa	150
Weschler Co., Inc	Erie, Pa	16

Customer	Location	Dozens
M. A. Gillispie	Jeanette, Pa	45
Farr Bros	Allentown, Pa	66
Watson Boot & Shoe Co	Watsontown, Pa	28
A. Ruff Son	Butler, Pa	60
		4,437
Manhattan Shoe Store	Baltimore, Md	16
M. Samuels	Baltimore, Md	4,058
Wm. Rosenstein Co	Baltimore, Md	100
		4,174
[fol. 670] Hirsch Bros	Washington, D. C	40
L. Bauereis Sons Co	Delaware, Ohio	17
Daytonia Shoe Co	Dayton, Ohio	142
Altman & Minces	Cincinnati, Ohio	20
The Frank Shoe Co	Canton, Ohio	77
H. D. Minces	Chillicothe, Ohio	46
H. D. Minces	Irontown, Ohio	97
The E. A. Pitts Co	Columbus, Ohio	19
The Fred Hageman Sons Co	Dayton, Ohio	35
H. D. Minces	Coshocton, Ohio	46
H. D. Minces	Ironton, Ohio	25
H. D. Minces	Chillicothe, Ohio	16
H. D. Minces	Cincinnati, Ohio	25
The A. E. Pitts Co	Columbus, Ohio	36
F. R. Lazarus	Columbus, Ohio	28
H. D. Minces	Coshocton, Ohio	12
Reed Shoe Co	Dayton, Ohio	6
A. A. Lazarus	Springfield, Ohio	11
M. O'Neil	Akron, Ohio	122
The May Co	Cleveland, Ohio	520
Stone Shoe Co	Cleveland, Ohio	18
Miller United Shoe Co	Cleveland, Ohio	198
C. C. Ferguson	Cleveland, Ohio	60
Biltwell Boot Shop	Toledo, Ohio	453
Smith Kasson Co	Cincinnati, Ohio	32
J. F. Streicher	Toledo, Ohio	17
Nisely Arcade Shoe Co	Springfield, Ohio	103
J. Nobil	Akron, Ohio	255
M. Zoob	Massillon, Ohio	64
The Lloyd Co	Akron, Ohio	2,432
J. Ziegler	Toledo, Ohio	74
		5,015
[fol. 671] The Rapp Co	New Castle, Ind	50
Rapps Cut Price Co	Kokomo, Ind	23
T. C. Rapp	Kokomo, Ind	32
The Rapp Co	Elkart, Ind	69
Chothier & Hutton	Marion, Ind	55
E. A. Riely	New Albany, Ind	30
Guarantee Shoe Co	Muncie, Ind	20
Ben Becker	Terre Haute, Ind	20
Rapps Cut Price Co	Elwood, Ind	37
Rapp Cut Price Co	Kokomo, Ind	33
F. W. Sowar Shoe Co	Marion, Ind	37
F. W. Sawar Shoe Co	Muncie, Ind	99
Reed Shoe Co	Fort Wayne, Ind	51
Geissler Shoe Co	Evansville, Ind	14
Renner Bros	Huntington, Ind	65
Rapps Cut Price Co	Richmond, Ind	33

Customer	Location	Dozens
Rapps Cut Price Co	Peru, Ind	38
Rapps Cut Price Co	Indianapolis, Ind	25
Valle Shoe Co	Kokomo, Ind	384
T. C. Rapp	Kokomo, Ind	91
Valle Shoe Co	Kokomo, Ind	520
The Rapp Co	New Castle, Ind	14
Rapps Cut Price Co	Kokomo, Ind	4
Geissler Shoe Co	Evansville, Ind	23
Noble Miller	Goshen, Ind	9
Burrough's Bros	Crawfordsville, Ind	94
Clothier & Hutton	Marion, Ind	45
J. H. Schultz Co	Evansville, Ind	10
Peoples Shoe Co	Evansville, Ind	8
Reed Shoe Co	Fort Wayne, Ind	74
E. A. Reily	New Albany, Ind	10
J. Goodman	Terre Haute, Ind	39
Ben Becker	Terre Haute, Ind	30
The Rapp Co	Anderson, Ind	36
The Rapp Co	Anderson, Ind	85
[fol. 672] The Rapp Co	Lafayette, Ind	27
The Rapp Co	Elkart, Ind	29
Rapp's Cut Price Co	Indianaopils, Ind	87
Stout's Factory Shoe Store	Indianapolis, Ind	263
Burrough's Bros	Crawfordsville, Ind	72
		2,685
Strum Bros	Springfield, Ill	21
Max L. Rosenberg	Christopher, Ill	5
Max L. Rosenberg	Ziegler, Ill	31
Sykes & Fanning	Roadhouse, Ill	5
B & M, Inc	Peoria, Ill	48
J. P. Schnellbacher	Peoria, Ill	35
Sam Schultz	Pana, Ill	40
Levy Merc. Co	Murphysboro, Ill	11
Sam Goldstein	Matton, Ill	90
J. V. Walker & Sons	Johnson City, Ill	5
Hopper & Son	Jacksonville, Ill	38
Ries Straus	Danville, Ill	20
J. M. Kaufman Co	Campaign, Ill	5
Huette-Wood Shoe Co	Cairo, Ill	18
B. McManus, Jr	Cairo, Ill	10
J. Phil Ruppel	Beardstown, Ill	12
J. V. Walker & Sons Clo. Co	Benton, Ill	19
Weber-Willmann Shoe Co	Belliville, Ill	5
J. N. Walker & Sons	Herrin, Ill	50
O. Arensmann	Harrisburg, Ill	28
C. P. Burnett Sons Co	Eldorado, Ill	177
J. V. Walker & Sons	Carterville, Ill	39
Terrell-Howe Co	Cairo, Ill	30
Sykes Fanning	White Hall, Ill	8
B. H. Luers & Sons	Springfield, Ill	18
F. M. Legg Shoe Co	Springfield, Ill	11
J. A. Bucks	Lincoln, Ill	17
Goodluck Shoe Co	Quincy, Ill	18
[fol. 673] Miller Helhake	Quincy, Ill	42
J. V. Walker & Sons	West Frankfort, Ill	52
Peoria Wholesale Shoe Co	Peoria, Ill	96
M. Barnard	Chicago, Ill	20
Fashion Boot Shop	Springfield, Ill	52
The Shoemarket	West Frankfort, Ill	15
Jean Burkhart	Marion, Ill	26

Customer	Location	Dozens
Brandt Shoe Co	St. Louis, Ill	22
Cuder Shoe Co	Chicago, Ill	1,470
Marshall Field	Chicago, Ill	43
Palmer House Boot Shop	Chicago, Ill	50
W. A. Wieboldt	Chicago, Ill	30
O. H Hassell	Chicago, Ill	795
Kamfner-Sachs Co	Chicago, Ill	133
Meyer Levinson	Chicago, Ill	90
O'Conner & Goldberg	Chicago, Ill	396
Lincoln Shoe Co	Bellville, Ill	251
Hilf Burgess & Doris	Johnston City, Ill	5
J. V. Walker & Sons Clo. Co	Benton, Ill	4
J. Phil Ruppel	Beardstown, Ill	7
Sam Schultz	Pana, Ill	40
J. M. Kaufman Co	Campaign, Ill	4
J. Greenwald	M'Leansboro, Ill	12
R. F. Empson	Bloomington, Ill	30
Mike Plaut Co	Danville, Ill	33
Leunig Shoe Co	Belleville, Ill	27
H. G. Vogel	Belleville, Ill	3
J. A. Bucke	Lincoln, Ill	34
F. M. Legg Shoe Co	Springfield, Ill	14
B. H. Luers & Sons	Springfield, Ill	13
C. P. Burnett Sons Co	Eldorado, Ill	8
Herrin Supply Co	Herrin, Ill	17
O. Arensmann	Harrisburg, Ill	19
O. L. Triebel	Springfield, Ill	18
Weber Willmann Co	Belleville, Ill	3
[fol. 674] J. V. Walker & Sons	Johnston City, Ill	11
J. P. Schnellbacher	Peoria, Ill	11
B & M Inc	Peoria, Ill	61
Huette-Wood Shoe Co	Cairo, Ill	43
Sam Goldstein	Matton, Ill	50
Max Rosenberg	Christopher, Ill	243
		5,104
C. C. Becker	Detroit, Mich	7
United Shoe Stores	Milwaukee, Wisc	12
S. J. Brouwer	Milwaukee, Wisc	74
		86
O. J. Morrison Co	Clarksburg, W. Va	37
Island Creek Store Co	Holden, W. Va	18
Island Creek Stores Co	Monaville, W. Va	10
Island Creek Store Co	Holden, W. Va	13
Island Creek Store Co. #1	Holden, W. Va	10
Island Creek Store Co	Holden, W. Va	40
Island Creek Stores Co	Minaville, W. Va	12
Ziegler Co	Huntington, W. Va	11
Island Creek Stores Co	Holden, W. Va	13
Richmond Bros	Kermit, W. Va	12
O. J. Morrison	Charleston, W. Va	31
O. J. Morrison Dept. Store	Huntington, W. Va	75
E. Deitz	Fairmont, W. Va	28
Consolidation Coal Co	Fairmont, W. Va	266
Island Creek Stores Co	Holden, W. Va	56
Richmond Bros	Kermit, W. Va	32
Consolidation Coal Co	Fairmont, W. Va	44
M. H. & M. Inc	Wheeling, W. Va	97
		805

Customer	Location	Dozens
I. Richmond Co.	Prestongberg, Ky.	36
S. Bassett Sons	Lexington, Ky.	19
[fol. 675] Moseson Goldstein	Louisville, Ky.	63
Adair & Allen	Lexington, Ky.	64
Moseson Goldstein	Louisville, Ky.	70
—— Marks	Pandeah, Ky.	21
Powers Willingham	Fulton, Ky.	55
J. A. Rudy & Sons	Paducah, Ky.	6
I. Richmond Co.	Prestonberg, Ky.	41
Adair & Allen	Lexington, Ky.	15
Boston Shoe Co.	Louisville, Ky.	111
		501
Benj. Block Merc. Co.	Memphis, Tenn.	10
Clayton-Draker	Murphreesboro, Tenn.	19
Stark Goodbar	Lebanon, Tenn.	10
Lewis Ginsburg	Memphis, Tenn.	33
Ellis Shoe Co.	Nashville, Tenn.	55
Ginsburg Bros.	Dyersbburg, Tenn.	46
Maxwell House Shoe Co.	Nashville, Tenn.	45
John A. Meadors & Son	Nashville, Tenn.	17
Maxwell House Shoe Co.	Nashville, Tenn.	56
Zellner Shoe Co.	Memphis, Tenn.	10
Lincoln Leather Co.	Fayetteville, Tenn.	192
Lewis & Ginsburg	Memphis, Tenn.	36
Ellis Shoe Co.	Nashville, Tenn.	39
Zellner Shoe Co.	Memphis, Tenn.	24
Shenn Shoe Co.	Memphis, Tenn.	12
S. H. George Sons Co.	Knoxville, Tenn.	84
Harbison Shoe Co.	Knoxville, Tenn.	265
R. Groskind	Memphis, Tenn.	100
Rosen Boot Shop	Memphis, Tenn.	17
		1,070
Harnsberger's Inc	Danville, Va.	10
F. W. Dabner Co.	Richmond, Va.	45
Banner Grocery Co.	Martinsville, Va.	10
[fol. 676] Harnsberger's Inc	Danville, Va.	9
Bush Flora Shoe Co.	Roanoke, Va.	39
H. Guld	Portsmouth, Va.	12
Johnston Bros.	Richmond, Va.	10
Hofheimer Bros.	Norfolk, Va.	658
		793
Anchor Stores Co.	Winston-Salem, N. C.	18
Thacker &. Brockman	Greenboro, N. C.	12
Adler Bros.	Kinston, N. C.	65
Bennett-Simpson Co.	Winston-Salem, N. C.	3
Anchor Stores Co.	Winston-Salem, N. C.	7
Fletcher Bros.	Winston-Salem, N. C.	12
Robinson Shoe Co.	Gastonia, N. C.	58
Foster Shoe Co.	Burlington, N. C.	52
Robinson Shoe Co.	Gastonia, N. C.	53
		280
McCall Weatherby Co.	Bennettsville, S. C.	13
John McSween	Timmonsville, S. C.	67
R. E. Howle Co.	Darlington, S. C.	19
S. L. Terry	Anderson, S. C.	11

Customer	Location	Dozens
Seyle Merc. Co	Greenville, S. C	105
Brandon Mills Stores	Greenville, S. C	40
John McSween	Timmonsville, S. C	63
McSween Merc. Co	Lamar, S. C	35
R. E. Howle Co	Darlington, S. C	6
S. L. Terry	Anderson, S. C	1
J. C. Burns	Greenwood, S. C	6
Seyle Merc. Co	Greenville, S. C	65
Brandon Mills Stores	Greenville, S. C	94
M. W. Brown	Pacolet, S. C	28
R. L. Thompson	Anderson, S. C	10
A. Friedheim Bros	Rock Hill, S. C	62
L. W. White Co	Abbeville, S. C	6
[fol. 677] E. P. & F. A. Davis	Columbia, S. C	13
W. L. Mosley	Orangeburg, S. C	30
J. L. Coker & Co	Hartsville, S. C	26
Foster Shoe Co	Burlington, S. C	16
Copland Bros	Newberry, S. C	28
Jos. Wylie Co	Chester, S. C	47
McCall Weatherby Co	Bennettsville, S. C	51
J. T. Wylie Co	Lancaster, S. C	14
Lever The Shoeman	Columbia, S. C	83
Patton Tillman & Bruce	Greenville, S. C	96
Wright Scruggs	Spartanburg, S. C	59
Lever The Shoeman	Columbia, S. C	34
Patton Tillman Bruce	Greenville, S. C	141
Wright Scruggs	Spartanburg, S. C	40
M. W. Brown	Pacolet, S. C	32
A. Friedheim Bros	Rock Hill, S. C	34
W. L. Mosley	Orangeburg, S. C	21
Copeland Bros	Newberry, S. C	10
Jos. Wylie Co	Chester, S. C	39
		1,445
Meyer Wolf	Macon, Ga	16
J. H. Churchwell	Fitzgerald, Ga	54
J. H. Churchwell	Cordelle, Ga	35
Churchwell Bros	Tifton, Ga	30
A. F. Churchwell	Albany, Ga	49
Brittan Bros. Co	Lindale, Ga	51
Churchwell Bros	Way Cross, Ga	68
Sawilowsky Bros. Co	Savannah, Ga	111
Blumberg Bros	Savannah, Ga	22
Braselton Bros	Braselton, Ga	43
Churchwell Bros	Americus, Ga	77
I. Block	Greensboro, Ga	54
The X. V. Clothes Shop	Macon, Ga	5
M. R. Burg, Jr	Macon, Ga	30
[fol. 678] American Shoe Co	Augusta, Ga	117
Buch's Shoe Store	Atlanta, Ga	89
Churchwell Bros	Moultrie, Ga	21
Abe Joel & Sons	Athens, Ga	21
M. D. Calhoun	Way Cross, Ga	52
A. F. Churchwell	Albany, Ga	26
Brittan Bros. Co	Lindale, Ga	35
Churchwell Bros	Way Cross, Ga	6
Sawilowsky Bros. Co	Savannah, Ga	121
Blumberg Bros	Savannah, Ga	28
Braselton Bros	Braselton, Ga	59
Churchwell Bros	Americus, Ga	51
I. Block	Greensboro, Ga	52
The Fair	Thomasville, Ga	6

Customer	Location	Dozens
Johnson Shoe Co	Athens, Ga	23
Miller Poche Co	Washington, Ga	14
The X. Y. Clothes Shop	Macon, Ga	31
M. R. Burg	Macon, Ga	17
American Shoe Co	Augusta, Ga	76
Roberts Lark	Dawson, Ga	20
Bucks Shoe Store	Atlanta, Ga	69
Hauger-Davis Co	Wrightsville, Ga	39
Miller Cash Store	Rome, Ga	51
B. Goldwasser	Athens, Ga	18
J. T. Strange Co	Winder, Ga	27
D. D. Jackson	Gainsville, Ga	9
Benton Supply Co	Monticello, Ga	47
T. H. Holland	Madison, Ga	11
Bickers Goodwin Co	Greenboro, Ga	21
J. H. Whitehead	Waynesboro, Ga	25
Davis Mathis Co	Tennille, Ga	14
S. W. Goldstein	Griffin, Ga	39
Pecks & Black	Montizuna, Ga	16
L. W. Dozier Co	Dawson, Ga	6
M. Blumberg & Son	Savannah, Ga	57
[fol. 679] A. Harkins	Macon, Ga	2
C. W. Hatcher	Atlanta, Ga	55
Meyer Wolf	Macon, Ga	21
J. H. Churchwell	Fitzgerald, Ga	25
Churchwell Bros	Dublin, Ga	12
J. H. Churchwell	Cordele, Ga	36
Churchwell Bros	Tifton, Ga	31
Mulherin & Marks	Augusta, Ga	42
Black's Shoe Store	Atlanta, Ga	22
M. W. Bowen	Gainesville, Ga	8
Abe Joel & Sons	Athens, Ga	4
Mulherin & Marks	Augusta, Ga	72
B. Goldwasser	Athens, Ga	8
M. Blumberg & Son	Savannah, Ga	44
E. I. Smith Shoe Co	Athens, Ga	31
C. W. Hatcher	Atlanta, Ga	21
Churchwell Bros	Dublin, Ga	45
		2,473
Simon Shoe Co	Mobile, Ala	42
Simon Shoe Co	Mobile, Ala	45
Guarantee Shoe Co	Birmingham, Ala	342
		429
Abe Rubel Co	Corinth, Miss	2
P. L. Murkland	Beloit, Miss	17
		19
A. P. Schiro	New Orleans, La	42
A. P. Schiro	New Orleans, La	32
Cahn & Wachenheim	New Orleans, La	33
		107
Peo Herden Shoe Co	Fort Smith, Ark	76
B. Levin Dry Goods Co	Little Rock, Ark	35
[fol. 680] The Leader (A. Brander)	Earle, Ark	6
I. Kempner	Little Rock, Ark	5
The Leader (A. Brander)	Earle, Ark	9
		131

Customer	Location	Dozens
W. H. Toller	Kansas City, Mo	895
Graham's Boot Shop	Kansas City, Mo	91
F. Levy Shoe Company	St. Louis, Mo	90
Swope Shoe Company	St. Louis, Mo	5
W. B. Huelte Shoe Company	St. Louis, Mo	347
W. B. Huelte Shoe Company	St. Louis, Mo	272
Royal Company	St. Louis, Mo	889
F. Weber Shoe Company	St. Louis, Mo	32
C. Heitman	St. Louis, Mo	73
E. M. Steffen	St. Louis, Mo	6
Huelsmann Shoe Company	St. Louis, Mo	127
Famous Barr Company	St. Louis, Mo	96
D. G. Feldenheimer Company	Moberly, Mo	47
Fit-Well Shoe Company	St. Louis, Mo	74
J. Bastran Shoe Company	St. Louis, Mo	17
E. A. Werner	St. Louis, Mo	58
J. M. Steffen	St. Louis, Mo	30
C. E. Williams	St. Louis, Mo	427
Brooks Wyley	Chilicothe, Mo	35
Geo. H. Kohlmann	St. Charles, Mo	41
Jones & Marks	Canton, Mo	12
Logan Shoe Company	Hannibal, Mo	36
Boyle Bros	St. Joseph, Mo	4
W. H. Griffith & Son	St. Joseph, Mo	6
P. E. Burren	Joplin, Mo	38
C. B. Miller Shoe Company	Columbia, Mo	57
Modern Shoe	St. Louis, Mo	244
Smith Bros. Shoe Store	Louisiana, Mo	28
Max S. Rosenberg	St. Louis, Mo	44
W. B. Huette Shoe Company	St. Louis, Mo	370
[fol. 681] W. B. Huette Shoe Company	St. Louis, Mo	460
Jos. Steinman & Son	Mexico, Mo	8
Royal Company	St. Louis, Mo	140
C. B. Miller Shoe Company	Columbia, Mo	16
W. H. Griffith & Son	St. Joseph, Mo	33
R. B. Cobb & Son	St. Joseph, Mo	29
F. & A. Victor	Boonville, Mo	7
Payne Henderson	Fulton, Mo	8
Brooks Wyley	Chilicothe, Mo	9
L. L. Hake	Washington, Mo	10
C. E. Williams	St. Louis, Mo	31
E. A. Werner	St. Louis, Mo	45
J. Bastian Shoe Company	St. Louis, Mo	12
Fit-Well Shoe Company	St. Louis, Mo	44
Sipple Clothing Company	Chilicothe, Mo	19
Famous Barr Company	St. Louis, Mo	64
J. M. Steffen	St. Louis, Mo	84
Swope Shoe Company	St. Louis, Mo	16
F. Weber Shoe Company	St. Louis, Mo	4
Kurz Wolf	St. Louis, Mo	18
O. Heitzman	St. Louis, Mo	79
Markofsky & Goldstein	St. Louis, Mo	6
I. Levy Shoe Company	St. Louis, Mo	298
J. L. Meier	Pevely, Mo	6
		5,939
Sol Panor	Des Moines, Iowa	84
Hegberg & Peterson	Ottumwa, Iowa	16
Larsen's Bargain Shoe Co	Davenport, Iowa	30
Harvey's Shoe Parlor	Oskalosa, Iowa	5
Steven's Shoe Store	Ottumwa, Iowa	44

Customer	Location	Dozens
M. Barmash	Ottumwa, Iowa	12
Bagbey Peterson	Ottumwa, Iowa	15
True Fit Co	Ottumwa, Iowa	18
		224
[fol. 682] S. M. Shaw	Ada, Okla	41
Palace Clothing Company	Tulsa, Okla	121
Plymouth Clothing Company	Tulsa, Okla	4
I. Rubin	Oklahoma City, Okla	58
		224
Joske Bros. Co	San Antonio, Texas	99
Segall's Upstair Shoe Parlor	Waco, Texas	4
Gardere Holloway	Marlin, Texas	36
Roach Molyment	Del Rio, Texas	20
L. Kahn	Marshall, Texas	51
J. B. Rayland Merc. Co	Kennville, Texas	19
Guarantee Shoe Company	El Paso, Texas	99
E. Salinas & Bros	Laredo, Texas	22
M. Viscaya Sierra	Laredo, Texas	36
Aug. C. Richter	Laredo, Texas	9
Sturgis Goldstein Co	Taylor, Texas	40
Thorndale Merc. Co	Thorndale, Texas	57
Volk Bros. Co	Dallas, Texas	139
Hirdspeth D. G. Co	Greenville, Texas	11
H. Blackfield	Galveston, Texas	8
Sanger Bros	Dallas, Texas	44
Hammersmith Bros	Houston, Texas	151
Hammersmith Bros	Galveston, Texas	20
F. M. Hammond Co	Lancaster, Texas	22
Fitche Goettinger	Dallas, Texas	22
Sanjer Bros	Waco, Texas	43
The United Shoe	Houston, Texas	49
Leon Kahn	Dallas, Texas	12
J. B. Rayland	McAllen, Texas	10
Badouh Bros	El Paso, Texas	15
Louis Michaelson & Bro	Dallas, Texas	51
I. Rude	Dallas, Texas	5
Carl H. Mueller	Austin, Texas	11
Goldorf Shoe Co	El Paso, Texas	23
[fol. 683] Guarantee Shoe House	Fort Worth, Texas	45
Sanger Bros	Dallas, Texas	11
Gordon Cut Rate Shoe	Houston, Texas	30
Kennedy Shoe	Texarkana, Texas	2
J. A. Brite	Sunset, Texas	20
Sanger Bros	Waco, Texas	7
Gardere-Halloway	Merlin, Texas	13
Goodman's Guarantee Shoe Co	Laredo, Texas	7
Aug. C. Richter	Laredo, Texas	7
M. Viscaya Sierra	Laredo, Texas	13
F. M. Hammond	Lancaster, Texas	2
Hammersmith	Houston, Texas	115
H. Blankfield	Galveston, Texas	25
Walk Over Boot Shop	El Paso, Texas	29
Guarantee Shoe Company	El Paso, Texas	100
Roach Molymont	Del Rio, Texas	14
Louis Michaelson & Bros	Dallas, Texas	52
E. Quicksilver	Breskennoy, Texas	3
Hub Clothing Co	Wichita Falls, Texas	41
		1,664

Customer	Location	Dozens
Adam Katz	Ybor City, Fla	6
The Palace	Ybor City, Fla	42
Hercovitz Bros	Ybor City, Fla	37
Samuel Sawilowsky	Jacksonville, Fla	31
Adam Katz	Ybor City, Fla	47
The Palace	Ybor City, Fla	26
Parker & Tully	Tampa, Fla	5
D. D. Fitzgerald	Jacksonville, Fla	25
American Shoe Co	Jacksonville, Fla	8
Herscovitz Bros	Ybor City, Fla	33
D. D. Fitzgerald	Jacksonville, Fla	36
Max Argintar	Ybor City, Fla	25
S. Simovitz	W. Tampa, Fla	16
Jordan & Schmidt	Jacksonville, Fla	31
[fol. 684] Jordon Schmidt	Jacksonville, Fla	41
Jordan Schmidt	Jacksonville, Fla	28
Jordan Schmidt	Jacksonville, Fla	68
Max Argintar	Ybor City, Fla	31
		536
Home Trade Co	Minn., Minn	7
Robinson Bros	Salt Lake City, Utah	56
Hirschman Shoe Co	Salt Lake City, Utah	169
		225
Henning Shoe Co	Denver, Colo	49
M. & S. Schulen	Spokane, Wash	7
Price Bros	Oregon City, Oregon	66
Ernest Hirsch	San Francisco, Cal	64
Nettleton Co	Los Angeles, Cal	62
Young's Shoe Co	Los Angeles, Cal	79
C. H. Baker	Los Angeles, Cal	13
J. M. Price	San Francisco, Cal	96
Fit Eeze Shoe Co	San Francisco, Cal	94
Gude's Inc	Los Angeles, Cal	8
Harvard Shoe #2	Los Angeles, Cal	101
P. Karl	Los Angeles, Cal	8
Somer & Kaufman	San Francisco, Cal	247
De Bantelo Shoe Co	Los Angeles, Cal	18
		790
Parker & Munroe Ltd	St. Johns, Newfoundland	34
American Factors Co	Honolulu, Hawaiian Islands	1,614

RESPONDENT'S EXHIBIT No. 38

June 12, 1923.

W. H. McElwain Company, 580-590 Atlantic Ave., Boston, Massachusetts:

GENTLEMEN: By resolution passed by our Board of Directors today, in which the several offers dated June 4, [fol. 685] 1923, for purchase of your properties were ratified and confirmed, the time for acceptance of said orders was extended to June 20, 1923.

Yours very truly, International Shoe Company, ——

——, President.

RESPONDENT'S EXHIBIT No. 39

Shoes Produced in Pairs by Eastern Factories

	1920	1921	1922	1923	1924
Jan.	609,473	77,709	693,318	768,386	647,387
Feb.	563,946	162,210	605,119	672,652	568,829
March	686,412	234,569	729,805	784,669	592,872
April	716,592	196,917	624,076	656,093	493,917
May	653,924	261,092	529,124	789,855	.....
June	655,389	361,604	553,607	693,515	.....
July	415,568	340,364	522,716	485,310	.....
Aug.	614,733	438,338	657,276	678,583	.....
Sept.	358,851	461,850	654,021	572,421	.....
Oct.	207,467	548,951	691,210	684,369	.....
Nov.	87,652	580,962	722,946	707,561	.....
Dec.	154,689	704,515	686,625	530,922	.....

RESPONDENT'S EXHIBIT No. 40

W. H. McElwain Company Sales, 1920-1921

	1919	1920	Decrease	% decrease
Sept.	$2,572,742	$1,521,183	*$1,051,559*	*41*
Oct.	2,969,735	861,864	*2,107,871*	*71*
Nov.	2,596,018	655,933	*1,940,085*	*75*
Dec.	2,876,813	549,135	*2,327,678*	*81*
	1920	1921		
Jan.	3,021,408	262,259	*2,759,149*	*91*
Feb.	2,587,756	646,484	*1,941,272*	*75*
Mar.	3,432,243	1,300,170	*2,132,073*	*62*
Apr.	3,138,117	637,760	*2,500,357*	*80*
May	4,067,417	947,849	*3,119,568*	*76*
	27,262,249	7,382,637	*19,879,612*	*73*

[fol. 686] RESPONDENT'S EXHIBIT No. 41

CPW. June 8, 1923.

Lee Higginson & Co., 44 State St., Boston, Mass.

GENTLEMEN: We have a firm offer from International Shoe Company of St. Louis for the purchase of all the properties and assets of this Company of every kind, for which the International Shoe Company are willing to pay us $15,537,821.91 in cash, we to pay our own liabilities and liquidate the Company at our own expense. We have an alternative offer from International Shoe Company to pay in cash $3,063,125.89 for the net assets of the Company, the International Shoe Company agreeing to pay all the debts of the Company and to assume the liquidation of the Company. The debts of the Company amount to $12,474,696.02. These offers are based upon the book value of the assets of the Company as of April 30, 1923, plus $500,000.

You are familiar with this Company, have examined its plants, and are broadly familiar with its assets. You have recently looked over a schedule of assets as prepared by Messrs. Marwick Mitchell & Co. We sincerely hope that you will find that you can make us an offer for these assets higher than that we already have in hand. Should we receive such an offer, we shall present it to the stockholders of the Company with the recommendation that it be accepted. The stockholders are to meet on June 20th, but if you desire more time to consider the matter, we are prepared to postpone the meeting. May we ask you to let us hear from you at your convenience?

Yours very truly, W. H. McElwain Company, ——
——, President.

RESPONDENT'S EXHIBIT No. 42

Lee, Higginson & Company, 44 State Street, Boston 8

LJ-MP. June 15, 1923.

Clifford H. Warren, Esq., President, W. H. McElwain Co., 590, Atlantic Ave., Boston 8, Mass.

DEAR SIR: We have received your letter of June 8th, stating that you have an offer from the International Shoe

Co. of $15,537,821.91 in cash for all the properties and as-
[fol. 687] sets of every kind, and asking us if we would care to consider at this time making you a proposition.

We thank you for bringing this matter to our attention, but we do not feel that we care to make any better proposition than you already have.

We return herewith statement of Messrs. Marwick, Mitchell & Co. which you left with us.

Very truly yours, Lee Higginson & Co.

Enclosure.

RESPONDENT'S EXHIBIT No. 43

CPW. June 12, 1923.

Mr. Eben H. Ellison, 26 South St., Boston, Mass.

DEAR MR. ELLISON: We have a firm offer from International Shoe Company of St. Louis for the purchase of all of the properties and assets of this Company of every kind, for which the International Shoe Company are willing to pay us $15,537,821.91 in cash, we to pay our own liabilities and liquidate the Company at our own expense. We have an alternative offer from International Shoe Company to pay in cash $3,063,125.89 for the net assets of the Company, the International Shoe Company agreeing to pay all the debts of the Company and to assume the liquidation of the Company. The debts of the Company amount to $12,-474,696.02. These offers are based upon the book value of the assets of the Company as of April 30, 1923, plus $500,000.

You are familiar with this Company, have examined its plants, and are broadly familiar with its assets. You have recently looked over a schedule of assets as prepared by Messrs. Marwick Mitchell & Co. We sincerely hope that you will find that you can make us an offer for these assets higher than that we already have in hand. Should we receive such an offer, we shall present it to the stockholders of the Company with the recommendation that it be accepted. The stockholders are to meet on June 20th, but if you desire more time to consider the matter, we are pre-

[fol. 688] pared to postpone the meeting. May we ask you to let us hear from you at your convenience?

Yours very truly, W. H. McElwain Company. ——
——, President.

RESPONDENT'S EXHIBIT No. 44

Proctor Ellison Company, Sole Leather, 26 South Street, Boston

June 16, 1923.

Mr. Clifford P. Warren, 53 State St., Boston, Mass.

DEAR SIR: Your letter of June 12th received in regard to purchasing all the property and the assets of the W. H. McElwain Company.

I am much obliged to you for your offer, but I would not be interested at the price you quote. I am personally quite familiar with the property and assets, and I have been into the matter carefully with Mr. Prescott, who probably knows as much about them as anybody. He advises me that there would not be anything in it for me to purchase at the price you ask, and so I will have to pass it, unless you decide that you are willing to entertain a lower offering.

If later you decide you are in position to trade on a lower basis, kindly advise, and I will be glad to give the matter consideration.

Yours very truly, E. H. Ellison.

A.

RESPONDENT'S EXHIBIT No. 45

W. H. McElwain Company

Special Meeting of Stockholders—June 20, 1923

Minutes

Pursuant to the by-laws of the Company and to the foregoing notice, a special meeting of the Stockholders of W. H. McElwain Company was held at the principal office of

the Company, 590 Atlantic Avenue, Boston, Massachusetts, June 20, 1923, at ten o'clock A. M.

Clifford P. Warren, President of the Company, presided [fol. 689] over the meeting, and C. S. Howland, Clerk of the Company, kept the minutes thereof.

The Chairman canvassed the meeting, and stated that there were represented in person or by proxy the following holders of stock, constituting more than a quorum.

Holders of First Preferred Stock:	
Bennett, Limited, by its proxy, Pierre Bonin	69,946 shares
Holders of Common Stock:	
Stanley King, Special Account	4 shares
J. Franklin McElwain and Stanley King, Joint Tenants, by their proxy, Stanley King	51,993 shares
Total shares of Second Preferred Stock represented	51,997 shares
Holders of Second Preferred Stock:	
J. Franklin McElwain and Stanley King, Joint Tenants, represented by their proxy, Stanley Kink	69,340 shares
Bennett, Limited, by its proxy, Pierre Bonin	491 shares
Clifford P. Warren, in person	4 shares
C. S. Howland, in person	1 share
Edward L. Prescott, in person	1 share
Charles J. Prescott, in person	1 share
Frederick B. Smith, in person	1 share
Total of Common Stock represented.	69,839 shares

The President stated that in view of the continuance of the conditions which have heretofore entitled the holders of First Preferred and Second Preferred Stock of the Company to vote all classes of stock are entitled to vote at this meeting.

The minutes of the meetings of the Board of Directors of the Company held since the annual meeting of the Stockholders January 25, 1923, to wit, meetings of the Directors

held January 30, 1923, May 31, 1923, and June 6, 1923, were read to the meeting, and upon motion duly made and seconded it was

[fol. 690] Voted that the Stockholders of W. H. McElwain Company do hereby ratify, confirm and approve all the acts and proceedings of the Board of Directors of the Company since the annual meeting of its Stockholders held January 25, 1923, as set forth in the minutes of the Board.

The President stated that there were in the treasury of the Company 1,419 shares of First Preferred Stock, 2,000 shares of Second Preferred Stock, and 104 shares of Common Stock, which might well be retired, cancelled and extinguished, and that the holders of certain other stock, namely, 52,000 shares of Second Preferred Stock, and 69,346 shares of Common Stock, had offered that stock for retirement, cancellation and extinguishment.

Upon motion duly made and seconded it was therefore

Voted that the capital stock of W. H. McElwain Company be reduced by the retirement, cancellation and extinguishment of the following stock which has been issued, but is in the treasury of the Company:

1419 shares of First Preferred Stock of the par value of $100 each,

2000 shares of Second Preferred Stock of the par value of $50 each,

104 shares of Common Stock of the par value of $50 each, and it is further

Voted that the capital stock be further reduced by the retirement, cancellation and extinguishment of the following stock which has been offered by the holders thereof for such cancellation and extinguishment:

52,000 shares of Second Preferred Stock of the par value of $50 each,

69,346 shares of Common Stock of the par value of $50 each.

Upon the foregoing vote all of the stock of the Company represented at the meeting, being more than a majority of each class of stock outstanding and entitled to vote, was voted in the affirmative.

[fol. 691] Upon motion duly made and seconded it was

Voted to adjourn the meeting of the Stockholders for fifteen minutes until the articles of amendment with respect to the reduction of stock can be prepared and filed with the Secretary of the Commonwealth.

The meeting then adjourned for fifteen minutes.

Articles of amendment were then prepared, executed and filed with the Secretary of the Commonwealth of Massachusetts.

The certificates representing the stock to be retired had been surrendered to the Company.

This reduction of stock eliminated from the stock outstanding and represented at the meeting all of the Second Preferred Stock so represented, and also the Common Stock represented by J. Franklin McElwain and Stanley King, Joint Tenants.

At the expiration of the period for which adjournment had been had, the meeting was again called to order.

The President announced that articles of amendment, in accordance with the vote of the Stockholders at this meeting, had been filed at the State House, and that the reduction of the stock of the Company had therefore been effectuated.

The President presented to the meeting two offers which had been received from International Shoe Company, for the purchase of the property and assets of W. H. McElwain Company. The first of these offers is as follows:

"We offer to buy from you all your properties and assets, real, personal and mixed, tangible or intangible, of any and all descriptions, whether carried on your books as valuable assets or otherwise, upon the basis outlined hereinafter. This offer to buy shall be open for your acceptance until 12 o'clock noon Eastern time on Wednesday, June 13, 1923.

We offer to pay to you in cash the sum of $16,537,821.91 for the aforesaid properties and in consideration of the terms and conditions hereinafter set forth.

The sum of $16,537,821.91 is arrived at by taking the [fol. 692] values of your properties as shown by your books and by an audit thereof made by Marwick, Mitchell & Company, as of April 30, 1923 ($15,037,821.91) and adding thereto the sum of $1,500,000.00.

The offer is upon the condition that you agree that we shall assume none of your liabilities, that you will liquidate all your liabilities in your own way and without cost to us, that the properties sold to us shall be free from all encumbrances, liens, etc., except such mortgages, rights of way, easements or the like as may exist of record or as may be hereafter specifically assumed by us.

Upon acceptance you will agree to make such warranty deeds, conveyances, bills of sale, assignments and transfers covering the properties to be sold as may be necessary to transfer title to us; also that such contracts, privileges, licenses, exemptions and other things or benefits now vested in or enjoyed by you but which in their nature are not assignable or which for any reason cannot be assigned immediately, will be held in trust by you for our benefit and you will hereafter manage and dispose of the same subject to our control and direction.

Such claims and demands as you may have against others, whether now in litigation or hereafter litigated shall be prosecuted in your name, for our benefit. We will agree to assume all expenses which may accrue on account of such litigation.

You will further agree to sell to us for the sum of $1.00 at any time the W. H. McElwain Company may be dissolved or as soon thereafter as is lawful, the sole right to use the name W. H. McElwain Company.

You agree to give us a statement under oath, showing the names and addresses of all your creditors on the date of your acceptance of this offer, together with the amount due each and the date when due, and will also deliver to us written waivers made by substantially all of your creditors of their rights under the Bulk Sales laws of the states of [fol. 693] Massachusetts, New Hampshire, Vermont, New York, Ohio, Illinois, California and Missouri, and the Republic of Argentine.

You will agree to hold us harmless and indemnified from any and all liability on account of any direct or contingent obligations of yours, arising on account of any business, transaction, affair, incident, or condition existing or transpiring in, or during the operation of, the various plants and properties before the date of transfer of the properties to us, whether such obligations may be due at the date of transfer of title or may accrue thereafter.

We will agree to hold you harmless and indemnified from any and all liability on account of any direct or contingent obligations of ours, arising on account of any business, transactions, affair, incident, or condition existing or transpiring in, or during the operation of, the various plants and properties after the date of transfer of the properties to us, including all liability on account of any business done or conditions existing under any contracts or agreements which are assigned by you to us, or performed by you for us after the date of transfer of title.

Transfer of title of all the properties as aforesaid and payment therefor shall be made on or before July 2, 1923, provided that if it is impossible for you to make such transfer of title on or before July 2, 1923, a reasonable extension of time will be granted by us.

If your stockholders accept this offer, we shall require a certified copy of the minutes of the stockholders meeting in which the acceptance is made and certified copies of the minutes of your directors meeting or meetings in which the various transfers, conveyances, etc., are approved.

If your stockholders accept this offer, immediately thereupon you will notify us thereof and we will embody the pertinent terms and conditions of this letter into the form of a contract for purchase and sale to be executed by your and our proper officers.

Yours truly, International Shoe Company, by F. C. Rand, President."

[fol. 694] The second of the offers is set forth in full in the vote of the Stockholders hereafter contained in these minutes.

The President stated that these offers represent an increase of $1,000,000 over the offers as referred to in the notice of this meeting, also that the substance of these offers had been communicated to two parties who might perhaps be interested, namely, Lee, Higginson Company and Proctor-Ellis Company, and that each concern had replied that it did not wish to make a better offer. The President also said that the time for the acceptance of these offers had been extended to June 20, 1923.

The second of the two offers of International Shoe Company was then accepted by the following vote:

Whereas the following offer has been received from International Shoe Company for the purchase of all the property and assets of W. H. McElwain Company of any and all descriptions for the sum of $4,063,125.89, the said International Shoe Company to assume and agree to pay and perform all the liabilities and obligations of W. H. McElwain Company exclusive of capital stock:

"We offer to buy from you all your properties and assets, real, personal and mixed, tangible or intangible, of any and all descriptions, whether carried on your books as valuable assets or otherwise, upon the basis outlined hereinafter. This offer to buy shall be open for your acceptance until 12 o'clock noon Eastern time on Wednesday, June 13th, 1923.

We offer to pay to you in cash the sum of $4,063,125.89 for the aforesaid properties and in consideration of the terms and conditions hereinafter set forth.

The sum of $4,063,125.89 is arrived at by taking the total net values of your properties and assets as shown by your books and by an audit thereof made by Marwick, Mitchell & Company as of April 30th, 1923 ($2,563,125.89) and adding thereto the sum of $1,500,000.00.

As a further consideration for said properties and assets we will agree to act as trustees in liquidation for you and in your behalf administer the liquidation of all lawful ac- [fol. 695] counts, claims and demands of any and all natures which may exist or which may arise against your company.

We will further agree to assume and to pay any and all lawful accounts, claims and demands that now exist or which may arise against your company, when the same may become due and payable.

Upon acceptance you will agree to make such warranty deeds, conveyances, bills of sale, assignments and transfers covering the properties to be sold as may be necessary to transfer title to us; also that such contracts, privileges, licenses, exemptions and other things or benefits now vested in or enjoyed by you but which in their nature are not assignable or which for any reason cannot be assigned immediately, will be held in trust by you for our benefit and you will hereafter manage and dispose of the same subject to our control and direction.

Such claims and demands as you may have against others, whether now in litigation or hereafter litigated shall be prosecuted in your name, for our benefit. We will agree to assume all expenses which may accrue on account of such litigation.

You will further agree to sell to us for the sum of $1.00 at any time the W. H. McElwain Company may be dissolved or as soon thereafter as is lawful, the sole right to use the name W. H. McElwain Company.

You agree to give to us a statement under oath, showing the names and addresses of all your creditors on the date of your acceptance of this offer, together with the amount due each and the date when due, and will also deliver to us written waivers made by substantially all of your creditors of their rights under the Bulk Sales laws of the States of Massachusetts, New Hampshire, Vermont, New York, Ohio, Illinois, California and Missouri, and the Republic of Argentine.

Transfer of title of all the properties as aforesaid and payment therefor shall be made on or before July 2nd, 1923, provided that if it is impossible for you to make such [fol. 696] transfer of title on or before July 2nd, 1923, a reasonable extension of time will be granted by us.

If your stockholders accept this offer, we shall require a certified copy of the minutes of the stockholders meeting in which the acceptance is made and certified copies of the minutes of your directors meeting or meetings in which the various transfers, conveyances, etc., are approved.

If your stockholders accept this offer, immediately thereupon you will notify us thereof and we will embody the pertinent terms and conditions of this letter into the form of a contract for the purchase and sale to be executed by your and our proper officers.

Yours truly, International Shoe Company, by F. C. Rand, President."

And whereas the Stockholders of W. H. McElwain Company consider that the acceptance of the said offer is for the interest of W. H. McElwain Company and of its Stockholders,

Now, therefore, it is

Voted, that W. H. McElwain Company accept the said offer of International Shoe Company and it is further

Voted that the Board of Directors of W. H. McElwain Company be and hereby is authorized and instructed to carry out in behalf of the Company and through such officer or officers as the Board may designate, the terms of such offer and acceptance, including the conveyance of all property of the Company, real, personal and mixed.

Upon this vote all of the stock was represented at the meeting, namely, 69,946 shares of First Preferred Stock, and 499 shares of Common Stock, being more than two-thirds of each class of stock outstanding and entitled to vote, was voted in the affirmative.

Upon motion duly made and seconded it was

Voted that the Board of Directors of W. H. McElwain Company be and hereby is authorized and instructed, when [fol. 697] the Company shall have conveyed all its property and assets in accordance with the offer of International Shoe Company and the acceptance thereof at this meeting, to distribute the purchase price among the Stockholders of the Company as a distribution of capital in liquidation of the Company, at such time or times and in such amounts as the Board shall determine, but in accordance with the requirements of the articles of organization and by-laws of the Company.

Upon motion duly made and seconded it was

Voted that the Board of Directors of W. H. McElwain Company be and hereby is instructed, after the completion of the sale of its property and assets in accordance with the offer of International Shoe Company and its acceptance at this meeting, and after its debts have been paid or provision made for such payment, and the balance of the purchase price has been distributed, to liquidate and dissolve the Company, including, if the Board shall so determine, proceedings for its dissolution under Chapter 155, Section 50, of the General Laws of the Commonwealth of Massachusetts. All of the stock represented at the meeting was voted in the affirmative upon the foregoing two motions.

Upon motion duly made and seconded it was

Voted that when this meeting adjourn, it adjourn until Wednesday, June 27, 1923, at ten o'clock a. m. at this place.

Upon motion duly made and seconded it was

Voted to adjourn.

Adjourned.

A true record. Attest: —— ——, Clerk.

W. H. McElwain Company

Special Meeting of Board of Directors—June 20, 1923

Call of the Meeting

C. S. Howland, Clerk W. H. McElwain Company:

As President of W. H. McElwain Company, I hereby call [fol. 698] a meeting of the Board of Directors of the Company, to be held at 590 Atlantic Avenue, Boston, Massachusetts, Wednesday, June 20, 1923, at 10.30 o'clock a. m., and I request that you give notice of that meeting.

—— ——, President.

Notice

Pursuant to the call of the President, a special meeting of the Board of Directors of W. H. McElwain Company will be held at 590 Atlantic Avenue, Boston, Massachusetts, Wednesday, June 20, 1923, at 10.30 o'clock a. m.

C. S. Howland, Clerk.

Certificate of Notice

I, C. S. Howland, Secretary of W. H. McElwain Company, certify that a notice of which the foregoing is a true copy was mailed to each director of W. H. McElwain Company, at least two days prior to the meeting thereby notified, postage paid, and addressed to such director at his address as it appeared upon the books of the corporation.

—— ——, Secretary.

Minutes

Pursuant to the call of the President and to the foregoing notice, a special meeting of the Board of Directors of W. H. McElwain Company was held at 590 Atlantic Avenue, Bos-

ton, Massachusetts, Wednesday, June 20, 1923, at 10.30 o'clock a. m.

There were present the following Directors, constituting a quorum: C. S. Howland, Edward L. Prescott, Frederick B. Smith, Clifford P. Warren.

Clifford P. Warren, Chairman of the Board, presided over the meeting, and C. S. Howland, Secretary of the Company, kept the minutes thereof.

The Chairman stated that Miss Meserve, elected as a Director of the Company, had failed to qualify by the ownership of stock, and did not wish to serve as such Director.

Upon motion duly made and seconded it was

[fol. 699] Voted to proceed to the election by ballot of a Director to fill the vacancy in the Board created by the failure of Miss Meserve to qualify.

A ballot was thereupon taken, and Charles J. Prescott, receiving all the votes cast, four in number, was elected to the office of Director. Mr. Prescott was present, and thereafter took part in meeting.

Upon motion duly made and seconded it was

Voted that the action of the President of the Company in executing in its name and behalf a deed of farm land in Kansas City, Missouri, under date of June 12, 1923, be and hereby is ratified, confirmed and approved.

This meeting having been called during the adjournment of the meeting of the Stockholders of the Company, and the Stockholders' meeting being ready to resume, upon motion duly made and seconded it was

Voted that this meeting adjourn until the close of the Stockholders' meeting now to be held. The meeting then adjourned.

At the close of the Stockholders' meeting, at 11.00 o'clock a. m., the meeting of the Directors was resumed with the same Directors present as theretofore.

Upon motion duly made and seconded the following vote was adopted:

Whereas the Stockholders of W. H. McElwain Company, at a special meeting held this day, have accepted an offer of International Shoe Company for the purchase of all the

property and assets of W. H. McElwain Company of any and all descriptions, for the sum of $4,063,125.89, the said International Shoe Company to assume and agree to pay and perform all the liabilities and obligations of W. H. McElwain Company, exclusive of capital stock, and

Whereas the Stockholders have authorized and instructed this Board to carry out in behalf of W. H. McElwain Company, and through such officers as this Board may desig- [fol. 700] nate, the terms of such offer and acceptance, including the conveyance of all property of the Company, real, personal and mixed.

Now therefore it is

Voted that Clifford P. Warren, President of W. H. McElwain Company, be and hereby is authorized and instructed to carry out, in behalf of the Company, the terms of the said offer and acceptance, and to execute such conveyances, contracts and other instruments as to him shall seem necessary or desirable in connection therewith, and it is further

Voted that the said Clifford P. Warren, President of the Company, is specifically authorized and instructed to execute an agreement and conveyance in writing, dated June 20, 1923, which has been presented to this meeting, between this Company and International Shoe Company, and also the deeds or conveyances which have been presented to this meeting of the land and buildings of W. H. McElwain Company situated at Machester, Merrimack, Newport, Claremont and Keene, New Hampshire, and at Windsor, Vermont, and the assignments which have been presented to this meeting of the leases to W. H. McElwain Company of land and buildings in said Manchester, and in Boston, Massachusetts, and New York City, New York.

Upon motion duly made and seconded it was

Voted that since, under the terms of the offer of International Shoe Company, said International Shoe Company has agreed to pay and perform all the liabilities and obligations of W. H. McElwain Company, exclusive of capital stock, and

Whereas it is understood and agreed that the expenses of this transaction will also be paid by International Shoe Company, and

Whereas the amount of the said purchase price is equivalent to the sum of $58.06041 for each share of the First Preferred Stock of W. H. McElwain Company outstanding,
[fol. 701] Now therefore it is

Voted that upon the receipt of the said purchase price said Clifford P. Warren, President of W. H. McElwain Company, be and hereby is authorized and instructed to pay to the Stockholders of the Company from the said purchase price the sum of $58.06041 for each share of the said First Preferred Stock held by them, upon the receipt from each such stockholder of such a receipt or release as shall seem to said Clifford P. Warren sufficient and satisfactory, the said payment being a distribution of capital in liquidation of the Company.

Upon motion duly made and seconded it was

Voted that the action of the Treasurer of W. H. McElwain Company in opening an account in the name and on behalf of the Company with The National Bank of Commerce of New York be and hereby is ratified, confirmed and approved.

Upon motion duly made and seconded it was

Voted that checks upon the account of W. H. McElwain Company in The National Bank of Commerce of New York may be signed in the name and on behalf of the Company by either one of Clifford P. Warren, President, and C. S. Howland, Treasurer.

Upon motion duly made and seconded it was

Voted that when this meeting adjourn, it adjourn until Friday, June 22, 1923, at two o'clock p. m., at Room 917, 53 State Street, Boston, Massachusetts.

Upon motion duly made and seconded it was

Voted to adjourn.
Adjourned.

A true record. Attest: —— ——, Secretary.

I, Clare S. Howland, Clerk and Secretary of W. H. McElwain Company, certify that the foregoing is a true and accurate copy from the records of the Company of the min-

utes of the special meetings of its Stockholders and Directors held June 20, 1923.

[fol. 702] In Witness whereof I hereunto set my hand and the seal of the Company this 26th day of June, 1923.

C. S. Howland, Clerk and Secretary. (Seal.)

RESPONDENT'S EXHIBIT No. 46

Aug. 12, 1920. 3738

The Consolidation Coal Co., Fairmont, W. Va.

45 Days
Thomason
EH PP
Order #5190 FS Req 119

1028	1	Mns	Patr	D10	7 50	
						7 70

For Everson Store
Everson, W Va.

RESPONDENT'S EXHIBIT No. 47

Summary Showing the Number of Towns of Less Than 10,000 People in Which W. H. McElwain Company Sold and Showing the Number of Dozen Pairs Sold in These Towns.

	No. of towns	No. of dozen
N. Y.	1	8
Pa.	5	46
O.	1	17
Ind	1	9
*Ill.	14	772
**W. Va.	3	216
Ky.	2	132
Tenn.	4	267
Va.	1	10
N. C.	2	117
S. C.	13	638
***Ga.	21	1029

* 7 chain store towns included—took 370 dozen pairs.
** 2 chain store towns included—took 172 dozen pairs.
*** 6 chain store towns included—took 417 dozen pairs.

[fol. 703] Miss.	2	19
Ark.	1	15
Mo.	8	179
Okla.	1	41
Iowa	1	5
Texas	8	233
	88	3753

* * * * * * *

W. H. McElwain Company sold in none of the towns of less than 10,000 people in the other 30 states. Of their total sales in U. S. (76,315 dozen pair) over 95% were in cities of over 10,000 population.

[fol. 704] EXHIBIT No. 48

1	2	3	4	5	6
State	Population according to 1920 census	Number of retail shoe dealers in the State	Number of shoe dealers in the State who bought from W. H. McElwain Co. in 1921 as shown by Respondent's Exhibit No. 37	Number of retailers included in column 4 to whom I. S. Co. sold "Patriot" shoes in 1921	Number of retailers in the State who bought I. S. Co. shoes of any and all kinds —These figures are approximated
Maine	768,014	1,764	0	0	1
Vermont	352,428	912	0	0	0
New Hampshire	443,083	853	1	0	0
Massachusetts	3,852,356	3,700	8	0	6
Connecticut	1,380,631	1,720	1	0	0
Rhode Island	604,397	682	1	0	2
New York	10,385,227	10,919	26	0	403
New Jersey	3,155,900	3,425	2	0	50
Pennsylvania	8,720,017	12,719	17	0	2183
Delaware	223,003	274	0	0	83
Maryland	1,449,661	2,165	3	0	718
West Virginia	1,463,701	3,208	8	1	1503
District of Columbia	437,571	202	1	0	69
Virginia	2,309,187	4,659	7	0	1852

North Carolina	2,559,123	3,275	7	0	2299
South Carolina	1,683,724	2,529	22	3	1212
Georgia	2,895,832	3,742	39	4	2238
[fol. 705] Florida	968,470	1,321	10	0	1057
Kentucky	2,416,630	3,990	8	0	4108
Tennessee	2,337,885	2,786	15	0	3220
Mississippi	1,790,618	2,596	2	0	2776
Alabama	2,348,174	3,156	2	0	2478
Ohio	5,759,394	6,266	26	0	2,784
Indiana	2,930,390	3,980	17	0	2,463
Illinois	6,485,280	8,215	47	0	6,143
Michigan	3,668,412	4,522	1	0	1,982
Wisconsin	2,632,067	4,275	2	0	1,741
North Dakota	646,872	1,313	0	0	840
South Dakota	636,547	1,265	0	0	877
Minnesota	2,387,125	3,506	1	0	1,774
Iowa	2,404,021	4,273	7	0	3,012
Nebraska	1,296,372	2,224	0	0	1,498
Kansas	1,769,257	3,086	0	0	2,233
Missouri	3,404,055	5,150	36	5	4,801
Arkansas	1,752,204	2,639	4	0	3,192
Oklahoma	2,028,283	2,835	4	0	3,375
Texas	4,663,228	5,502	37	2	6,373
Louisiana	1,798,509	2,378	2	0	2,039

EXHIBIT No. 48—Continued

1 State	2 Population according to 1920 census	3 Number of retail shoe dealers in the State	4 Number of shoe dealers in the State who bought from W. H. McElwain Co. in 1921 as shown by Respondent's Exhibit No. 37	5 Number of retailers included in column 4 to whom I. S. Co. sold "Patriot" shoes in 1921	6 Number of retailers in the State who bought I. S. Co. shoes of any and all kinds —These figures are approximated
Montana	548,889	950	0	0	522
Wyoming	194,402	357	0	0	297
[fol. 706] Idaho	431,866	585	0	0	475
Utah	449,396	606	2	0	338
Arizona	334,162	487	0	0	417
Colorado	939,629	1,252	1	0	1,035
New Mexico	360,350	499	0	0	592
Nevada	77,407	168	0	0	67
Washington	1,356,621	1,470	1	0	761
Oregon	783,389	830	1	0	504
California	3,426,861	2,637	11	1	1,849
					78,242

[fol. 707] In United States Circuit Court of Appeals for the First Circuit

No. —

International Shoe Company, Petitioner,

vs.

Federal Trade Commission, Respondent

Original Petition to Review

Motion to Have Court Adjudge Complaint Insufficient in Law

Comes now the petitioner in the above-entitled cause and moves the court to examine the complaint filed against the petitioner by the Federal Trade Commission and to adjudge the same to be insufficient in law, and thereupon to set aside the order made pursuant thereto.

Petitioner cannot know precisely what caption should be given to this motion: The proceeding is not one in equity: if it weres uch, a motion to strike would be the prescribed form; the proceeding is not one at law such as is contemplated by the conformity statute: if it were, the statutes of Massachusetts would show the way and that way might be a demurrer; the proceeding is not one at the common law: if [fol. 708] it were, one might entitle this a Motion for Judgment on the Pleadings.

The proceeding is one authorized by statute, but the Congress has not given it a character nor prescribed the detailed means of claiming its benefits.

The petitioner prays the court to consider its prerogative in every instance to examine and determine the sufficiency of the complaint sua sponte; and that the question of jurisdiction is decisive in whatever form it is raised. If the court conceives that under the law the petitioner should couch its request in a particular form, bearing a specified caption, then, the petitioner prays the court that it designate the form and the name for such motion and allow the petitioner a reasonable opportunity to meet the requirement by reprinting this motion. Otherwise the petitioner prays the court to accept this writing as a motion to Strike, or as a

Demurrer or as a Motion for Judgment on the Pleadings, according to which title shall serve most befittingly to characterize what follows.

To facilitate the convenience of the court, the petitioner herewith reproduces as Appendices the Complaint (I), the Answer (II), and the Order (III)—comprising the record proper.

And now after these apparently necessary circumlocutions about the form, petitioner proceeds to the substance of this proceeding:

The complaint is insufficient to constitute a cause for a proceeding by the Commission under the authority of section 7 of the Clayton Act, for the reason that it does not allege a fact or facts which, if proved as laid, would empower the court to determine and find;

1. What shares of capital stock, if any, either the petitioner or said W. H. McElwain Company had issued and [fol. 709] outstanding, either at the date of said stock acquisition or at the date of filing said complaint.

or

2. What was the amount of the invested capital or the approximate net worth, measured in dollars and cents, of either of said corporations on either of the aforesaid dates.

or

3. What was the approximate volume of business done periodically by either of said corporations prior to said stock acquisition in any one variety or in more than one variety of shoes.

or

4. Whether the shoes sold by petitioner or by said W. H. McElwain Company prior to said stock acquisition were composed of leather, rubber or cloth or whether some of such shoes were of one of said materials and other of such shoes were of other of said materials.

or

5. What quantity, quality or variety of shoes or at what range of prices, were sold by either the petitioner or by

said W. H. McElwain Company in the course of their respective business activities prior to said stock acquisition.

or

6. Definitely and certainly what was the course of business pursued from day to day by the two corporations respectively. That is to say, what variety or varieties of shoes for men and boys either of them is charged with having sold and distributed in interstate commerce; whether [fol. 710] such shoes were hob nailed, or army shoes, or work shoes or cheap split leather dress shoes or the highest grade, most skillfully finished dress shoes of the kind advertised at, say, $10 per pair, or moderate priced dress shoes of good material and workmanship, but lacking the maximum touch in style and finish; or shoes exemplifying other qualities premeditated to meet certain of the manifold specifications embraced in the wide gamut of needs and tastes prevalent with 20,000,000 wearers of shoes for men and boys.

or

7. That at the date of said stock acquisition or prior thereto there was any competition, substantial or otherwise, between the petitioner and said W. H. McElwain Company in the sale and distribution of shoes in interstate commerce.

or

8. That at the date of said stock acquisition either of said corporations was engaged in selling and distributing shoes of any one variety or of more than one variety, in interstate commerce.

or

9. Whether each of the facts purported to be charged in said complaint, consisting of one count, is given character as an element (a) in the alleged offense of substantially lessening competition between the corporations named therein, or (b) in the alleged offense of restraining trade, or (c) in the alleged offense of tending to the creation of an unlawful monopoly in petitioner, or (d) in the distinct and different complexions of any two or (e) of all three of the aforesaid offenses.

[fol. 711] or

10. Whether or not said stock was acquired solely for investment as is expressly authorized by the third paragraph of said section 7 of the Clayton Act.

or

11. Under what circumstances petitioner acquired said stock.

or

12. What was the object, purpose and intent of either purchaser or seller in said stock acquisition.

or

13. What was the relative trade strength or weakness of either the petitioner or said W. H. McElwain Company in comparison with that of other persons, firms and corporations engaged in the business of selling and distributing shoes in interstate commerce.

or

14. What was the effect of said stock acquisition on competitors engaged in the business of selling and distributing shoes in interstate commerce.

or

15. In what respect or degree, if at all, said stock acquisition restrained trade; that is to say, what effect, if any, said stock acquisition had by way of (a) raising the prices of shoes, or (b) limiting the production or sale of shoes, or (c) deteriorating the quality of shoes produced and sold, or (d) oppressing or otherwise injuring any competitor in said business, or (e) decreasing the prices paid for labor or materials required to produce shoes.

[fol. 712] or

16. In what manner, by what means, or to what extent, if at all, said stock acquisition had a tendency to confer on

the petitioner an unlawful monopoly in the business of selling and distributing shoes in interstate commerce.

Frank Y. Gladney, R. E. Blake, Attorneys for Petitioner. J. D. Williamson, of Counsel.

[fol. 713] [APPENDIX I]

UNITED STATES OF AMERICA:

BEFORE FEDERAL TRADE COMMISSION

Docket No. 1023

In the Matter of INTERNATIONAL SHOE COMPANY

Complaint

Acting in the public interest, and having reason to believe that the International Shoe Company, hereinafter called the respondent, has violated and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914 (the Clayton Act), entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issues this complaint, against said respondent, stating its charges in that respect as follows:

Paragraph One. The International Shoe Company is a corporation organized March 16, 1921, under the laws of the State of Delaware, with an authorized capital stock of 250,000 shares of preferred stock with a par value of $100 each (or $25,000,000) and 1,400,000 shares of common stock of no stated par value, and has its principal office and place of business in the City of St. Louis, in the State of Missouri. It succeeded, and is a reorganization of International Shoe Company, a corporation organized in 1911 under the laws of the State of Missouri, having an authorized capital stock of fifteen million dollars ($15,000,000), [fol. 714] and the respondent succeeded to and acquired the rights and assets and assumed the liabilities of the Missouri corporation, which was thereupon dissolved. The

respondent owns and operates thirty-two or more shoe factories in the States of Illinois, Missouri, and Kentucky, some of which have been acquired by absorbing competing companies. The respondent also owns and operates stores, selling departments, and branch establishments among the several states and the District of Columbia, and is and has been engaged in the business of manufacturing shoes for men, women, boys, children and infants, and in selling such shoes to wholesale and retail shoe dealers and other purchasers in the various States of the United States in addition to those States in which its said shoe factories are located. It causes such shoes to be shipped and transported from the factories where made, and from stores and branch establishments, to purchasers among the several states of the United States, the territories thereof, and the District of Columbia, and is engaged in interstate commerce within the meaning of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms and corporations similarly engaged.

Paragraph Two. The W. H. McElwain Company is, and at the time hereinafter mentioned was, a corporation organized under the laws of Massachusetts, with an authorized capital stock of $14,140,000, and with its principal office in the City of Boston, in said State. It owns and operates shoe manufacturing plants in the State of New Hampshire, where shoes for men and boys have been and are manufactured, and owns and operates stores, selling departments, and branch establishments in the cities of Boston, Massachusetts; New York City, New York; Colum-[fol. 715] bus, Ohio; Chicago, Illinois; Kansas City, Missouri; San Francisco, California, and in other places within the several States of the United States and District of Columbia. It was and is engaged in the business of selling such shoes to wholesalers, retailers and others among the several States of the United States, the territories thereof, and the District of Columbia, and in shipping and transporting such shoes from the factories where made and from stores and branch establishments, to purchasers thereof in various cities and towns among the several States of the United States, the territories thereof and the District of Columbia, and is and has been engaged

in interstate commerce within the meaning of said Act of Congress approved October 15, 1914 (the Clayton Act) in competition with other persons, firms and corporations similarly engaged. On and prior to May 11, 1921, the respondent and the said W. H. McElwain Company were in competition with each other in the shoe business as hereinabove described.

Paragraph Three. On or about May 11, 1921, while the International Shoe Company and the W. H. McElwain Company were engaged in commerce in competition with each other as aforesaid, the International Shoe Company acquired the whole, or substantially all, of the stock or other share capital of said W. H. McElwain Company, and still owns and controls such stock or share capital so acquired. Such acquisition of such stock or share capital of the W. H. McElwain Company was contrary to law and violative of said Act of Congress approved October 15, 1914 (the Clayton Act), and especially Section 7 thereof. The effect of the acquisition by the respondent of such stock or other share capital of the W. H. McElwain Company was, to-wit:

(a) To substantially lessen competition between the W. H. McElwain Company, the corporation whose stock was [fol. 716] so acquired, and the International Shoe Company, the corporation making the acquisition;

(b) To restrain commerce in the shoe business in the several sections and communities of the United States in which the respondent and the said W. H. McElwain Company were engaged in business in interstate commerce, as aforesaid;

(c) To tend to create in the respondent a monopoly in interstate commerce in the shoe business.

Wherefore, the premises considered, the Federal Trade Commission, on this 18th day of May A. D. 1923, now issues its complaint against said respondent.

Notice

Notice is hereby given you, the International Shoe Company, respondent herein, that the 7th day of July, 1923, at

10:30 o'clock in the forenoon, is hereby fixed as the time, and the office of the Federal Trade Commission in the City of Washington, District of Columbia, as the place when and where hearings will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said act, to appear and show why an Order should not be entered by said Commission requiring you to cease and desist from the violation of law charged in this complaint.

In witness whereof, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, District of Columbia, this 18th day of May, 1923.

By the Commission.

Otis B. Johnson, Secretary.

RJL—o—5/11/23.

[fol. 717] [APPENDIX II]

UNITED STATES OF AMERICA:

BEFORE FEDERAL TRADE COMMISSION

Docket No. 1023

FEDERAL TRADE COMMISSION

vs.

INTERNATIONAL SHOE COMPANY

Answer of Respondent, International Shoe Company

The respondent, International Shoe Company, answering the complaint filed against it by the Commission, would respectfully show to the Commission.

First. It admits the allegations in Paragraph One of said complaint.

Second. It admits the allegations in Paragraph Two of said complaint.

1. At the time of the filing of this complaint and at the time of filing this answer, the stores, selling departments

and branch establishments formerly owned and operated by W. H. McElwain Company in the cities of Columbus, Ohio, Chicago, Illinois, Kansas City, Missouri, and San Francisco, California, were not owned and operated by W. H. McElwain Company.

2. Respondent denies that it and W. H. McElwain Company were in Competition with each other in the Shoe Business on and prior to May 11th, 1921.

Third. Respondent again denies that it was in competition with W. H. McElwain Company on May 11, 1921 but [fol. 718] admits that it acquired substantially all of the stock or other share capital of W. H. McElwain Company. Respondent denies any and all other allegations in Paragraph Three of said complaint.

Fourth. And further answering respondent would respectfully show the Commission that upon receipt of the complaint, and upon being advised that there was a possible technical violation of section 7 of the Clayton Act, in its acquisition and ownership of the share capital of W. H. McElwain Company, this respondent took the necessary steps to remedy any such technical violation; that it has divested itself of any and all stock or share capital of W. H. McElwain Company; that it does not now own, or control any stock or share capital of said W. H. McElwain Company; and that no officer, director or stockholder of respondent owns or controls any stock or share capital of said W. H. McElwain Company.

Wherefore, the premises considered, this respondent respectfully asks that this complaint be dismissed.

International Shoe Company, by F. C. Rand, President.

[Appendix III]

United States of America:

Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office, in the City of Washington, D. C., on the [fol. 719] 25th day of November, A. D. 1925.

Present: Vernon W. Van Fleet, Chairman; John F. Nugent, Charles W. Hunt, Huston Thompson, William E. Humphrey, Commissioners.

Docket No. 1023

In the Matter of INTERNATIONAL SHOE COMPANY

Order to Cease and Desist and Divest, etc.

This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on International Shoe Company, the answer of the respondent thereto, the testimony and evidence on file, and the brief and arguments of counsel. Thereupon the Federal Trade Commission made a report in writing in which it stated its findings as to the facts with its conclusion that International Shoe Company is and has been violating the provisions of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially Section 7 thereof.

It is therefore ordered that International Shoe Company:

1. Divest itself of all stock or share capital of W. H. McElwain Company, a corporation, which it may now hold or own, directly or indirectly, together with all right, title, interest and claim in and to such stock or share capital, substantially all the stock or share capital of W. H. McElwain Company being found and declared to have been acquired and to have been held, owned and used by Interna- [fol. 720] tional Shoe Company in violation of Section 7 of said Act of Congress.

2. Cease and desist from the ownership, operation, management and control of the assets, properties, rights, and privileges acquired by it from W. H. McElwain Company subsequent to the acquisition by it of the stock or share capital of W. H. McElwain Company, together with all improvements and additions thereto, which assets, properties, rights and privileges are found and declared to have been acquired and to be now held by International Shoe Company as the result of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company in violation of Section 7 of said Act of Congress.

3. Divest itself of all assets, properties, rights and privileges acquired by it from W. H. McElwain Company subsequent to the acquisition by it of the stock or share capital of W. H. McElwain Company, together with all improvements and additions thereto, which assets, properties, rights and privileges are found and declared to have been acquired and to be now held by International Shoe Company as the result of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company in violation of Section 7 of said Act of Congress.

4. Submit, within sixty (60) days from the date of this order, for the consideration and approval of the Federal Trade Commission, a plan for the performance of this order in a manner which shall restore in harmony with the law the competitive conditions which existed with respect to the respondent and such assets, properties, rights, and privileges prior to the acquisition by International Shoe Com- [fol. 721] pany of the stock or share capital of W. H. McElwain Company.

By the Commission, Commissioners Hunt and Humphrey dissenting. Commissioner Humphrey filed a memorandum of dissent, concurred in by Commissioner Hunt, which is attached.

Otis B. Johnson, Secretary. (Seal.)

ARB:k.

[fol. 722] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1928

No. 2225

INTERNATIONAL SHOE COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION

Petition to Review an Order of the Federal Trade Commission

Before Bingham, Johnson, and Anderson, JJ.

OPINION

November 27, 1928

ANDERSON, J.:

This is a proceeding to review an order of the Federal Trade Commission directing the petitioner to divest itself

of the stock of the W. H. McElwain Company, found to have been acquired in violation of section 7 of the Clayton Act, and of the properties of said company taken over through such stock acquisition after the Commission had issued its complaint. Section 7 of the Clayton Act (38 Stat. 730, 15 U. S. C. A. Sec. 18) provides:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

[fol. 723] By section 11, it is provided that, after hearing, the Commission shall state its findings of fact and cause an order to be served requiring the respondent to cease and desist from the violation charged and found. This section also provides for a review by a court of appeals and that "the findings of the Commission * * * as to the facts, if supported by testimony, shall be conclusive."

The scope of this statute and of the reviewing proceeding have been clearly defined in recent authoritative decisions.

In United Shoe Machinery Co. v. United States, 258 U. S. 451, 459, Mr. Justice Day says:

"The Sherman Act and the Clayton Act provide different tests of liability. This was determined in the recent case of Standard Fashion Co. v. Magrane-Houston Co., ante, 346. In that case we pointed out that the Clayton Act was intended to supplement the Sherman Act, and within its limited sphere established its own rule."

And in Standard Fashion Co. v. Magrane-Houston Co., 258 U. S. 346, the phrase "may be to substantially lessen competition" found in both sections 3 and 7, was dealt with as follows:

"Section 3 condemns sales or agreements where the effect of such sale or contract of sale 'may' be to substan-

tially lessen competition or tend to create monopoly. It thus deals with consequences to follow the making of the restrictive covenant limiting the right of the purchaser to deal in the goods of the seller only. But we do not think that that the purpose in using the word 'may' was to prohibit the mere possibility of the consequences described. It was intended to prevent such agreements as would under the circumstances disclosed probably lessen competition, or create an actual tendency to monopoly. That it was not intended to reach every remote lessening of competition is shown in the requirement that such lessening must be substantial."

Otherwise stated, contracts dealt with by section 3, and stock acquisitions referred to in section 7, are condemned where the effect creates a reasonable probability,—not a mere possibility,—that competition will be substantially lessened or a monopoly created. Compare Swift v. Federal Trade Commission, 8 Fed. (2d) 595, 597; Federal Trade [fol. 724] Commission v. Gratz, 253 U. S. 421, and footnotes to Mr. Justice Brandeis' dissenting opinion, pp. 431 et seq., quoting from the Committee reports, etc., when the Clayton Act was under discussion in Congress. Federal Trade Commission v. Eastman Kodak Co., 274 U. S. 619.

A recent and closely applicable decision is Federal Trade Commission v. Pacific Paper Association, 273 U. S. 52. In that case, the Court of Appeals for the Ninth Circuit had reversed paragraphs b and c of the order of the Commission, made on stipulated facts, from which the Commission found that the respondents had acted in violation of section 5 of the Federal Trade Commission Act, 38 Stat. 717.

But the Supreme Court reversed the Court of Appeals, holding (273 U. S. 63) that "the weight to be given to the facts and circumstances admitted, as well as the inferences reasonably to be drawn from them, is for the Commission. Its conclusion that the habitual use of the established list lessens competition and fixes prices in interstate territory cannot be said to be without sufficient support."

The jurisdiction of this court to review is not broad and general; it is limited, somewhat narrowly, to the grounds prescribed in the statute.

Petitioner's learned counsel states, near the beginning of his brief, that there is no dispute about the facts, not a sin-

gle conflict in the testimony of the witnesses, and that "the issue is nothing more than conflicting inferences, conclusions or opinions from the undisputed facts shown on the record."

This essentially accurate characterization of the bulky record of over 700 pages would, under the doctrine above stated in the Pacific Paper Association case, warrant this court in dismissing the petition without substantial discussion of petitioner's contention,—elaborated in a brief of over 100 pages,—that the Commission's inferences were wrong. It is not seriously contended that any of the findings of fact of the Commission are unsupported by the testimony. Petitioner merely seeks to induce this court to hold the Commission wrong in its inferences from the facts, and on that ground alone to reverse the order.

[fol. 725] Nevertheless, we have carefully examined the record and the petitioners' two briefs, with the result that we find that the inferences of the Commission are not only reasonably drawn from undisputed facts, but that no other inferences could, reasonably, be so drawn.

In brief outline the facts are as follows:

The International Shoe Company, with headquarters in St. Louis, grew out of a consolidation, some years ago, of three shoe manufacturing concerns. In 1921 it owned and operated at least thirty-two shoe factories in Missouri, Illinois and Kentucky, with a daily capacity of more than 70,000 pairs of shoes. It also owned tanneries. It manufactured a general line of leather shoes for men, women, boys, girls and infants, and sold them in interstate commerce in practically all the states of the United States. The W. H. McElwain Company was then a Massachusetts corporation, with headquarters in Boston, owning and operating tanneries, and shoe factories having a daily capacity of about 40,000 pairs, where it manufactured leather shoes for men, boys and misses, which it sold in at least thirty-five states of the United States. It also owned, in whole or in part, several branches or distributing houses. Its main output were dress shoes for men, thus distinguished from work shoes. The petitioner was the largest shoe manufacturer in the United States, and the McElwain Company the largest in New England, and the fourth or fifth in the United States.

Both concerns started from small beginnings, had been well and aggressively managed, and had for over twenty years been expanding their output, both in varieties of shoes manufactured and in the territory in which they marketed their shoes. Both companies showed marked tendencies towards what has come to be called the "integration of the industry," i. e., covering the field, from raw material (mainly hides) to actual wearer.

Paragraph 3 of the complaint reads:

"On or about May 11, 1921, while the International Shoe Company and the W. H. McElwain Company were engaged in commerce in competition with each other as aforesaid, [fol. 726] the International Shoe Company acquired the whole, or substantially all, of the stock or other share capital of said W. H. McElwain Company, and still owns and controls such stock or share capital so acquired. Such acquisition of such stock or share capital of the W. H. McElwain Company was contrary to law and violative of said Act of Congress approved October 15, 1914 (the Clayton Act), and especially Section 7 thereof. The effect of the acquisition by the respondent of such stock or other share capital of the W. H. McElwain Company was, to wit:

(a) To substantially lessen competition between the W. H. McElwain Company, the corporation whose stock was so acquired, and the International Shoe Company, the corporation making the acquisition;

(b) To restrain commerce in the shoe business in the several sections and communities of the United States in which the respondent and the said W. H. McElwain [Company] were engaged in business in interstate commerce, as aforesaid;

(c) To tend to create in the respondent a monopoly in interstate commerce in the shoe business."

After hearing, the Commission on November 25, 1925, made a long report of its findings of fact, paragraphs 5 and 6 of which are as follows:

"Paragraph Five. The shoes produced by W. H. McElwain Company in 1921 and for some time prior thereto were

sold to retail dealers at about six to nine dollars per pair. At the same time the International Shoe Company produced a line of men's dress shoes known as the 'Patriot' brand, and of that brand ten styles of low shoes and twenty-two styles of high shoes were similar in style, comparable in price, and equal or superior in quality to the men's high and low dress shoes produced by the W. H. McElwain Company. The 'Patriot' shoes manufactured and sold by respondent were sold to retailers at about the same price per pair as the shoes manufactured and sold by W. H. McElwain Company. Both companies made and sold medium priced dress shoes and sold such shoes to retail dealers in the same States, and in many of the same cities and towns, and in some instances to the same dealers. On and prior to May 11, 1921, both companies were engaged in manufacturing and selling leather dress shoes in commerce among the several States and the District of Columbia, in competition [fol. 727] with each other, and with others similarly engaged. The competition in commerce between the two companies was substantial.

"Paragraph Six. Respondent is the largest manufacturer of leather shoes in the United States. In its catalogue for the spring and summer of 1921 respondent listed and described sixty-nine types or styles of low shoes and sixty-two types or styles of high shoes for women; thirty-nine types or styles of leather low shoes and seventy-six types or styles of leather high shoes for men; thirty-two styles or types of leather low shoes, and forty-five styles or types of leather high shoes for children; thirty-two styles or types of leather high shoes for boys; thirty-seven styles or types of leather shoes for infants, and sixty-one styles or types of leather high work shoes for men. In addition, respondent's catalogue listed and described about fifty varieties of cloth or canvas shoes, and sixteen varieties of rubber soled shoes."

The findings in these paragraphs are fully supported by the testimony, and are therefore conclusive on this court. The acquisition of the stock was admitted; concededly it eliminated all competition.

Petitioner seeks to escape from the findings, fully supported by testimony, and the fair inferences therefrom, to

the effect that the two concerns were in substantial competition when the petitioner purchased all of the McElwain Company's stock (except 50 shares of first preferred and 35 shares of the common), by contending that the McElwain Company was then insolvent, in the sense that "it was unable to pay its debts as they became due," and that therefore it was no longer a potential or prospective competitor.

The Commission expressly found that the McElwain Company was not insolvent within the Bankruptcy Act definition. Plainly it was not. After weeks of negotiation, petitioner's executive officers,—undoubtedly as competent a set of shoe manufacturers as there are in the world,—concluded that the McElwain Company's equity, above its debts of some $17,000,000, was $9,460,832.50; it purchased the stocks on that basis, after inventory, appraisal and audit of the McElwain Company's assets. The McElwain [fol. 728] Company's capital stock then outstanding was: first preferred, par value $6,993,100, mostly held by the investing public; second preferred stock, $2,600,000, largely held by the employees and officials of the Company; and the common stock $3,494,800, mainly held by the executive staff.

While the McElwain Company had suffered substantial losses in the tremendous slump in prices of 1920-21, there is no foundation whatever for the petitioner's contention that (except for this purchase) the concern would have gone out of existence and therefore out of competition with the petitioner. On the contrary, there were several alternatives,—all reasonable and inconsistent with the petitioner's theory that the McElwain Company's losses suffered and consequent shortage of working capital, would (except for the merger with petitioner) have put it out of the shoe-producing business. Some of these alternatives are:

(a) The McElwain Company's bank creditors might have carried the concern, just as at that time the banks were carrying a very large percentage of the business concerns in this community. It was a period of "frozen credits," a time when there was practically a conceded moratorium to a large share of our business concerns, which competed fiercely for rehabilitating trade.

(b) If a receivership had been found a necessary expedient, competition under receivership management would have been likely to be intensified, not eliminated.

(c) In case of actual bankruptcy, the holders of the preferred stock (one or both classes) would in their own interest have taken over the property, kept it in active operation and therefore in competition.

To hold, as petitioner's counsel ask this court to hold, that the Commission was bound to draw the inference that the McElwain Company's financial condition was such that it would have ceased to be a competitor of the International in the shoe business, would be for the court, ultra vires, to substitute a highly speculative prophecy for the Commission's fair and soundly-grounded contrary inference.

About two years after this purchase, in May, 1923, the [fol. 729] Commission filed this complaint, alleging violation of section 7 of the Clayton Act. On July 5, 1923, the petitioner filed its answer; the fourth paragraph of this reads as follows:

"Fourth. And further answering respondent would respectfully show the Commission that upon receipt of the complaint, and upon being advised that there was a possible technical violation of Section 7 of the Clayton Act, in its acquisition and ownership of the share capital of W. H. McElwain Company, this respondent took the necessary steps to remedy any such technical violation; that it has divested itself of any and all stock or share capital of W. H. McElwain Company; that it does not now own or control any stock or share capital of said W. H. McElwain Company; and that no officer, director, or stockholder of respondent owns or controls any stock or share capital of said W. H. McElwain Company. Therefore, the premises considered, this respondent respectfully asks that this complaint be dismissed."

This divestment, it is admitted, was nothing but an absorption by the petitioner of the assets of the McElwain Company, carried through by petitioner by putting the stocks into the hands of dummies who passed the requisite votes and signed the papers. The Commission was fully warranted in finding that "the transactions * * * were

not bona fide * * * and that the transfer to the respondent of the assets, properties, rights and privileges of the W. H. McElwain Company was a mere artifice and subterfuge to evade said Act of Congress." The best that petitioner's counsel is able to say in defence of this transaction is that it did not deceive the Commission.

The Commission's report and order were filed on November 25, 1925. The order required the International Company to submit within sixty days a plan of compliance. The effective date was thereafter on the petitioner's application extended from time to time; and then suspended until the Supreme Court should announce its decision in the case of Federal Trade Commission v. Thatcher Mfg. Co., then before that court on certiorari. The Thatcher case was decided November 23, 1926 (272 U. S. 554), after which petitioner sought and obtained a full rehearing upon the merits. The case was reargued on March 18, 1927; on May 7, 1927, [fol. 730] the Commission reaffirmed its former position, thus making the effective date of the Commission's order May 7, 1927. Thereafter, the petitioner submitted a plan of compliance which was disapproved on June 30, 1927. The petition was filed in this court on March 3, 1928.

This history makes it fairly clear that the petitioner's attempt to transmute its acquisition of the stocks into an acquisition of the assets must have been grounded on the advice of counsel that the original purchase and holding were illegal, and on the hope that the Supreme Court in the Thatcher case would hold such acquisition of the assets, although after complaint filed, effective to oust the Commission's jurisdiction. The Supreme Court did not so hold. A bare majority of the court held that the Commission's order and the decree below should be reversed (as to the main portion) on the ground that the purchasing corporation had used its stock control in order to obtain the transfer of the business and assets before the Commission had instituted proceedings. The court, by Mr. Justice McReynolds, said:

"The Act has no application to ownership of a competitor's property and business obtained prior to any action by the Commission, even though this was brought about through stock unlawfully held * * *. If purchase of property has produced an unlawful status a remedy is provided

through the courts. The Commission is without authority under such circumstances."

This ruling evoked a dissent from Mr. Justice Brandeis, concurred in by the Chief Justice, Mr. Justice Holmes, and Mr. Justice Stone; who were of the opinion that the Commission could deal effectively with the matter, even although through the stock the purchasing company had obtained the assets of its competitors before the institution of the proceeding before the Commission under section 7.

Neither opinion leaves petitioner a chance to argue that this pseudo-purchase of assets after complaint filed has affected the Commission's jurisdiction.

Another groundless contention of the petitioner is "that in substance and reality the purchase was one of assets and [fol. 731] business." It was not. The petitioner refused to have anything to do with the merger on the basis of purchasing assets and business; it not only insisted upon the purchase of the stocks, but insisted that the purchase price, nearly $9,500,000, should be so divided among the three classes of stocks as to require a sacrifice of 17½ percent (about $1,220,000) from par by the holders of the first preferred (the investing public), and 25 percent (about $650,000) by the second preferred; in order that the holders of the common stock,—which had been wiped out by the losses,—might obtain 50 percent. The common stock then had the voting power and was held mostly by the executive forces; the purchaser wanted, for obvious business reasons, to retain the effective managerial forces of this concern in good courage and friendly attitude, when undertaking long distance management of the McElwain Company's great business. The motives on both sides to put through a merger so advantageous to voters in the selling company are obvious.

Finally, petitioner argues that no such case of monopoly or damage to the public interest is made out as would ground a case under the Sherman Act. A sufficient answer is that the case is not brought under the Sherman Act, but under the Clayton Act; and "the Sherman Act and the Clayton Act provide different tests of liability." United Shoe Machinery Company v. United States, supra.

The order of the Federal Trade Commission is affirmed.

[fol. 732] In United States Circuit Court of Appeals

Minute Entry

On June 28, 1928, this cause came on to be heard upon petitioner's Motion to have the Court Adjudge the Complaint Insufficient in Law (page 709) and was fully heard by the court, Honorable George H. Bingham and Honorable George W. Anderson, Circuit Judges, and Honorable Clarence Hale, District Judge, sitting.

On the same day, to wit, June 28, 1928, the following Order of Court was entered:

In United States Circuit Court of Appeals

Order Denying Motion to Have Complaint Adjudged Insufficient—June 28, 1928

It is ordered that petitioner's motion to have the complaint adjudged insufficient in law be, and the same hereby is, denied.

By the Court.

Arthur I. Charron, Clerk.

In United States Circuit Court of Appeals

Minute Entry

Thereafter, to wit, on October 4 and 5, 1928, this cause came on to be heard on the merits and was fully heard by the court, Honorable George H. Bingham, Honorable Charles F. Johnson and Honorable George W. Anderson, Circuit Judges, sitting.

Thereafter, to wit, on November 27, 1928, the Opinion of the Court (page 725) was filed and the following Final Decree was entered:

In United States Circuit Court of Appeals

Final Decree—November 27, 1928

This cause came on to be heard October 4 and 5, 1928, upon a petition to review *and* the transcript of proceedings

before the Federal Trade Commission, and was argued by counsel:

Upon consideration whereof, It is now, to wit, November 27, 1928, here ordered, adjudged and decreed as follows: The order of the Federal Trade Commission is affirmed.

By the Court.

Arthur I. Charron, Clerk.

[fol. 733] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 734 & 735] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING REHEARING—May 20, 1929

On consideration of the petition for rehearing filed herein,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted. The order heretofore issued denying the petition for a writ of certiorari is revoked, and the writ is ordered to issue.

[fol. 736] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 20, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,027. U. S. Circuit Court of Appeals, First Circuit. Term No. 42. International Shoe Company, petitioner, vs. Federal Trade Commission. Petition for writ of certiorari and exhibit thereto. Filed February 25th, 1929. File No. 34,027.

FILED
FEB 25 1929
CHARLES ELMORE CROPLEY
CLERK

FILE COPY

No. ~~[illegible]~~ 42

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

INTERNATIONAL SHOE COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST CIRCUIT

FRANK Y. GLADNEY,
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CHARLES NAGEL,
Attorneys for Petitioner.

Real Estate Prtg. and Pub. Co., St. Louis, Mo., MAin 0617

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. ———

INTERNATIONAL SHOE COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

The International Shoe Company, a corporation, prays for a writ of certiorari to review a judgment of the Court of Appeals for the First Circuit, entered November 27, 1928, which affirmed an order of the Federal Trade Commission issued against the International Shoe Company under authority of Section 7 of the Clayton Anti-Trust Act (October 15, 1914; 38 Stat. 730) which provides:

> "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such

commerce in any section or community, or tend to create a monopoly of any line of commerce."

A. Statement of the Case

This case involves the right of one corporation to purchase the shares of another when, after prolonged and exhaustive efforts to avoid its dilemma, to which the purchasing corporation in no sense contributed, the selling corporation is faced with the choice of liquidation or sale. The Federal Trade Commission ordered the petitioner to divest itself of the shares so purchased, and to cease and desist from the ownership, operation and management of the properties represented by such shares. This order was affirmed by the Court of Appeals for the First Circuit.

Petitioner contends that the conditions which attended its purchase present no cause for denunciation under the Clayton Act, but, on the contrary, in their very nature avoid the dangers against which that act undertakes to protect the public. The facts are exhaustively presented in the record, to which more particular reference is made in the more detailed statement in the brief. There is no conflict in the testimony. Briefly given, the facts are essentially these:

Up to 1920 the business of manufacturing shoes was generally prosperous. There were about fifteen hundred such concerns in the United States. Among the largest were the parties to the transaction in question—one, the petitioner, International Shoe Company, a Delaware corporation, having outstanding preferred stock of the par value of $12,500,000.00, and 765,000 shares of common stock without par value, and of an actual value of approximately $28,000,000.00, with its chief offices in St. Louis, and with factories nearby in Missouri, Illinois and Kentucky, and its business chiefly in the West and South. The other,

the W. H. McElwain Company, having outstanding capital stock of the par value of about $14,000,000.00, and with chief offices in Boston, and factories in New Hampshire, and its principal sales territory east of Illinois and north of the Ohio river.

Apart from the general nature of their business, the two concerns sustained no relation to each other. Their products were essentially different. The McElwain Company manufactured only dress shoes for men and boys. The petitioner, on the other hand, manufactured a large variety, including shoes for women, children and misses; work shoes for men and boys and dress shoes for men but not for boys.

The petitioner's production of men's dress shoes—the one staple of the McElwain Company, constituted only four per cent of petitioner's output; and while in a geographic sense both concerns sometimes entered the same territory, the men's dress shoes made by them respectively appealed to different classes of customers.

About ninety-five per cent of petitioner's business was in towns having a population of six thousand or less; to this country trade it offered a strictly all-leather shoe in which durability was stressed rather than style or finish. Approximately ninety-five per cent of the McElwain Company's business was in cities having a population of ten thousand or more; it tendered a shoe, the selling potentiality of which was finish and appearance rather than durability or all-leather quality. The petitioner sold its product exclusively to small town retailers and invariably under its brands or marks. The McElwain Company sold its product to wholesalers, jobbers and large retailers and, when requested, stamped the shoes with the brand or mark of the purchaser. The course and method of the two concerns had no effect whatever upon each other's fortunes.

In the latter part of 1920 and early in 1921, the shoe manufacturing business in general suffered a serious depression; but the experience of the two concerns was precisely opposite. The International Shoe Company adopted a policy of caution. It had purchased materials conservatively and anticipated the coming depression by slightly lowering its prices. In the spring of 1921 it had orders greatly in excess of the capacity of its factories. There was not time to erect new factories. The W. H. McElwain Company, on the contrary, early in 1920, had contracted for an abundant stock of hides and other materials at peak prices. It could not afford to meet the decline which shortly came about. Its orders were cancelled to the extent of $7,000,000.00. In the course of a year (from May, 1920) a surplus of $3,888,440.00 was turned into a deficit of $4,382,136.00. About one-half of its factories were shut down. It owed approximately $15,000,000.00 to banks in New England, and about $2,000,000.00 on open account. Its paper was maturing, and the date (May 31) for publishing its financial statement (required under the laws of Massachusetts) was approaching. Every effort to secure extensions or new capital had been exhausted; and the conclusion was reached by the officers and their financial advisers that the choice was between a liquidation receivership and a sale.

Under these circumstances, about March, 1921, representatives of the McElwain Company came to St. Louis without notice to ask the International Shoe Company for aid. During March and April several conferences were held. In the several conferences discussion was confined solely to assets on the basis of sound value. When tentative agreement of their value was reached, it then became apparent that all McElwain's executives and shoe workers who held second

preferred and common stock would be "broke", as nothing would be left out of the value of the assets to apply to such stock. So the International Company agreed to buy all classes of stock for the value of the assets, paying 82½% for the first preferred, 75% for second preferred, and 50% for common. The aggregate of all stock at these figures was the agreed value of assets. The avowed purpose was to satisfy all debts, to avoid the serious consequences of a crash, to secure enough to the stockholding members of the McElwain Company organization to retain their active interest in reviving the failing concern, and for the International Shoe Company to have sufficient factories to meet its requirements. The International Shoe Company had no organization in New England, and was in no position to man this added enterprise from St. Louis. The contract called for the delivery of all shares and there was no restriction against shareholders of the McElwain Company re-entering the business of manufacturing shoes, as several of them later did. A small amount of stock failed to come in. The rest came in promptly upon the disclosure by officers of the McElwain Company that, in case of a receivership, the debts might not be paid and, at best, the first preferred would receive only a small percentage of par.

Upon the consummation of the sale in May, 1921, the International Shoe Company broadly advertised the transaction, particularly in the East. It at once sold some of the distributing branches of the McElwain Company to the managers of such branches; it tried to sell the others, and after failing to do so, closed them to save further loss. It sold the shoes on hand as rapidly as possible; it endeavored to collect accounts; it operated all factories giving work to all old employes and maintaining the full wage scale.

But it became necessary for the International Shoe Company to advance, between May 11 and November 30, 1921, $11,850,000.00 to pay the maturing debts of the McElwain Company, which could not have been satisfied otherwise without a sale of the McElwain factories.

Petitioner sold the McElwain shoes on hand, the orders for which had been cancelled, as best it could. Some of these shoes it sold to its own customers, but only after a full explanation as to the origin and qualities of the shoes. It used the newly acquired factories in large part to manufacture its own kind of shoes to meet its particular needs. Throughout the purchasing company treated the property of the selling company as part of its own system, although the paper organization of the latter was retained until some time in June, 1923.

On May 18, 1923, two years after the purchase, all the facts having been public property during the intervening period, the Federal Trade Commission filed its complaint.

Proceedings Before the Commission and in the Court of Appeals.

(1) The Complaint of the Commission.

On May 18, 1923, the Commission filed its complaint (R. 29) charging that in 1921 the petitioner was engaged in "manufacturing shoes for men, women, boys, children and infants and in selling *such* shoes" in interstate commerce "in competition with other persons, firms and corporations similarly engaged"; that the W. H. McElwain Company was manufacturing "shoes for men and boys" and was engaged "in the business of selling *such* shoes" in interstate commerce "in com-

petition with other persons, firms and corporations similarly engaged"; that the two corporations were "in competition with each other in the shoe business as hereinabove described"; that while the two concerns were "in competition with each other, as aforesaid," the petitioner acquired the stock of the McElwain Company; that the effect of the acquisition was to substantially lessen competition between the two corporations; to "restrain commerce in the shoe business"; to tend to create in petitioner "a monopoly in interstate commerce in the shoe business".

The complaint does not charge what was the approximate volume of business done periodically by either concern; what quantity, quality or variety of shoes, or at what range of prices, were sold by either; with respect to what kind of shoes there was competition; under what circumstances petitioner acquired the stock; what was the object, purpose and intent of either purchaser or seller; in what respect or degree, and as to what class of shoes, the stock acquisition restrained commerce; in what manner and to what extent the stock acquisition had a tendency to create an unlawful monopoly in petitioner.

(2) The Answer.

By its answer (R. 32) filed July 3, 1923, the petitioner denied the existence of competition; admitted the purchase of all the stock and the acquisition of substantially all of it, denied violation of Section 7 of the Clayton Act, and alleged that after the complaint was filed it had disposed of the shares of stock.

(3 The Hearing Before the Commission.

On the hearing before the Commission it was shown by the evidence— (1) that there never had been

substantial competition between the two corporations; (2) that at the date of stock acquisition (May 11, 1921) the McElwain Company was insolvent; that is to say, unable to pay its debts as they became due, and unable to procure new capital or extensions, and hence, in contemplation of law, its competition, whether with petitioner or with others, had ceased; (3) that a large portion of the stores had been sold, and that others had been closed; that all factories had been reopened, and that all the property of the old McElwain Company still retained was operated as a part of petitioner's business; (4) that 6000 operatives were given employment, the full wage was maintained, and the price of shoes was lowered.

(4) The Findings and Order of the Commission.

The Commission made an elaborate written report (R. 499-523) in which (a bare majority concurring) it found that (R. 502) "on and prior to May 11, 1921" * * * "the competition in commerce between the two companies was substantial"; that (R. 512) the effect of the acquisition was (a) to substantially lessen competition between the two concerns "in the sale of dress shoes for men"; (b) to restrain commerce in the sale of such shoes. The charge that the acquisition had a tendency to create in petitioner a monopoly in the shoe business was dropped and is out of the case. As to the defense based upon the insolvent condition of the McElwain Company, the Commission found that (R. 512-3) at the date of the stock acquisition the McElwain Company was not insolvent within the meaning of the National Bankruptcy Act.

By its order (R. 523), the effective date of which is May 7, 1927 (R. 541), the Commission called upon the petitioner to divest itself of the stock of the McElwain Company and to cease and desist from the

ownership, operation and management of the properties formerly owned by the McElwain Company.

Commissioners Hunt and Humphrey dissented. Commissioner Humphrey filed a memorandum of dissent, concurred in by Commissioner Hunt, which is in part as follows:

"In this case the evidence shows the following facts:

1. That the respondent acquired the stock of the McElwain Company.

2. That the respondent and the McElwain Company at the time were in competition. Whether such competition was material, is a matter of opinion.

3. That the McElwain Company initiated the transaction.

4. That at the time of the transaction the McElwain Company was in a failing financial condition, or at least its officers believed that it was, and they believed that its bankruptcy was probable.

5. That the respondent at the time had taken more orders than it was able to fill, at its then capacity, and was considerably troubled with these excess orders, and was very desirous, for this reason, of increasing production.

6. That it used the organization and assets acquired from the McElwain Company in increasing its output, largely for the purpose of filling these excess orders.

7. That the respondent did not increase prices; on the contrary, in some instances, it voluntarily decreased prices.

8. That it made better shoes, and sold them for the same or less money than the McElwain Company was selling the same class of shoes at the time the respondent acquired its stock.

9. That the respondent did not use the stock so acquired by voting or otherwise to bring about, or attempting to bring about, the substantial lessening of competition.

10. That the public was in no degree, in any

way, injured by the transaction. On the contrary, the evidence shows that the public was benefited thereby.

QUESTIONS OF LAW

Admitting, but not asserting, that there was substantial competition between the respondent and the McElwain Company at the time of the transaction complained of, it was probable that this competition was going to be destroyed by the failure of the McElwain Company. This circumstance removed the very evil that the statute was intended to prevent. This being true, the transaction was not unlawful. (*American Press Association v. United States,* 245 Fed. 91)." (R. 525-6).

* * * * *

"Had the respondent been content to wait, if we are to be guided by the evidence, then in a short time its competitor would have been bankrupt. The stockholders would have lost their entire investments. A great organization would have been destroyed and the competition with which the respondent is charged with destroying would have been wiped out without cost to the respondent of a dollar.

In this case, the commission has given warning to the business world that no one must answer the cry of distress. If they do, and save a vessel from complete wreck, no matter what the effect may be upon the public, they will be condemned and must suffer the penalty. But it will be perfectly proper and commendable to stand by until the vessel sinks, and its competition with them is thereby entirely destroyed, and then pick up whatever flotsam and jetsam they may, but under no circumstances must the vessel be saved, however much it may be to the public interest. I think such policy must inevitably injure the public and be immeasurably detrimental to our industries.

I can not be oblivious to the fact that by the

issuance of this order many innocent investors will be injured and that no one will be benefited." (R. 527.)

In its efforts to show the Commission that its order could not be complied with, petitioner finally moved the Commission for leave to take further testimony (R. 34), and to have it modify its order. To that end petitioner alleged and offered to prove that the properties formerly belonging to the McElwain Company can not be sold for any reasonable price to a responsible purchaser who can and will continue the production of shoes; that without the capital, merchandise orders and trade supervision of the petitioner, investors can not be induced to embark capital in the business formerly conducted by the McElwain Company. The Commission ignored the motion and the offer of proof.

(5) The Decision by the Court of Appeals.

On March 3, 1928, petitioner filed its petition (R. 1) to have the order of the Commission reviewed and set aside. It specifically alleged the insufficiency of the complaint (R.15), the undisputed proof of the insolvency of the McElwain Company (R. 17), and the positive proof that there was no substantial competition between the two concerns (R. 21).

Petitioner further filed a motion (R. 709) to have the Court of Appeals adjudge the complaint insufficient. The Court denied the motion without comment on the day that it was argued (R. 735). The case was heard on the merits October 4 and 5, 1928, and on November 27, 1928 (R. 735) the Court of Appeals affirmed the order of the Commission, holding that there was substantial competition between the two corporations, and that the McElwain Company was not insolvent (applying the bankruptcy definition of insolvency).

Throughout the inquiry as to whether there was substantial competition between the two corporations, both the Commission and the Court of Appeals ignore the fact that the McElwain Company was unable to pay its debts as they became due; and that, apart from its financial embarrassment, it was, under the law of Massachusetts, insolvent.

Both Commission and Court predicate the unlawfulness of the stock acquisition on the finding that the book value of the McElwain Company's total assets exceeded the amount of its debts and hence, within the definition of the National Bankruptcy Act, it was not insolvent.

The test and legal consequences of insolvency as established by the law of Massachusetts and recognized by common experience, are disregarded; and they base petitioners' liability solely on the insolvency definition of the Bankruptcy Act. It is always for the Court to inqure whether facts found by an administrative commission and made conclusive by statute are supported by substantial testimony. In this case, however, the Court adopts the Commission's report without inquiry whether there was testimony to sustain the finding of substantial competition before the sale, or capacity for any competition then or thereafter. Beyond that, the Court indulges in suggestions of what might have been done to save the McElwain Company, which suggestions are shown by all witnesses to have been impossible of realization; and all of which are refuted by the testimony of all parties in interest, whose primary concern it was to make the best of a desperate situation.

B. Reasons Relied on for the Issuance of the Writ.

(1) The complaint does not allege facts sufficient to constitute a violation of Section 7 of the Clayton

Act. Without such complaint, the Commission has no jurisdiction. *Fed Trade Com. v. Gratz* (1920) 253 U. S. 421.

(2) This Court has heretofore held that in a proceeding of this nature, the respondent shall not be condemned upon mere inferences; and in this case the findings as to substantial competition between the two companies, as to the solvency of the McElwain Company, and as to the reasons for acquisition in the form of a stock purchase, are pure inferences which are contradicted by the undisputed testimony of all the witnesses.

> "Manifestly, the Court must inquire whether the Commission's findings of fact are supported by evidence."
>
> *Fed. Trade Com. v. Curtis Pub. Co.*, 260 U. S., at page 580.

(3) There was no substantial competition between the two corporations at the date of the transaction.

(4) At the time of the sale the McElwain Company's only alternatives were liquidation or sale. Upon its own showing its debts could have been paid only by a sale of its factories, and further competition with any one was therefore entirely eliminated.

(5) Technical insolvency was not the test. The question was one of practical relief for stockholders and creditors from impending disaster. The step taken provided the only practical measure for such relief.

(6) If the legal definition of insolvency is to govern, the bankruptcy act is not the test. The Massachusetts law determined the rights, interests and the fate of the McElwain Company, and the imperative

provisions of that law only accentuated the recognized financial dilemma of the company.

(7) In holding that it was unlawful for the petitioner to acquire the stock of the McElwain Company under the circumstances so given, the Court of Appeals has greatly enlarged the scope of Section 7, and is in direct conflict with the interpretation given that section by this Court, in that phase of the *Fed. Trade Com. v. Thatcher Mfg. Co.*, 272 U. S. 560, which deals with the acquisition of the share capital of Woodbury Glass Co.

The decision is also in conflict with the principles announced by this Court, in *United States v. United States Steel Corp.* (1920), 251 U. S. 417, and by the Court of Appeals for the Seventh Circuit, in *American Press Assn. v. United States* (1917), 245 Fed. 91, both construing the Sherman Anti-Trust Act.

(8) The evidence shows that the transaction between the two corporations though in form a stock purchase was in substance a purchase of assets. The purpose of petitioner was to acquire additional facilities for its production. Its orders exceeded its capacity, and the products of the acquired factories were sold to satisfy its requirements. Production and sales were increased, wages were maintained, prices of shoes were lowered, and it is submitted the purchase under such circumstances was not a violation of the provisions of the Clayton Act.

> "The act by express terms says that Section 7 does not apply to a corporation purchasing such stock * * * and not using the same to bring about, or in attempting to bring about, the substantial lessening of competition."
>
> *Fed. Trade Com. v Thatcher Mfg. Co.*, 5 Fed. 2d p. 622, par. 6-7; which case was affirmed by this Court; 272 U. S. 560.

(9) It is of great importance to the business interests of this country to have this Court decide whether or not Section 7 of the Clayton Act forbids a failing concern to salvage its assets through the medium of a sale of its stock, with no consequences inimical to the public interest. It is a question of first impression.

(10) The decision of the Circuit Court of Appeals in this case is of such importance as to call for the exercise of this Court's power of supervision and determination of the law upon the subject.

(11) The Commission's complaint is aimed solely at petitioner's failure to observe a purely technical procedure. That pursuit is futile, because petitioner has now technically consummated what had been virtually done before. The order to sell assets is impossible of fulfillment because they have been absorbed, and because no responsible purchaser will take them subject to the debts which petitioner now controls.

Wherefore it is respectfully submitted that the writ of certiorari should issue as prayed.

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TABLE OF CONTENTS

		Page
I.	Opinion of the Court Below	1
II.	Jurisdiction	1
III.	Statement of the Facts	2-10
	(1) The McElwain Company and Its Financial Predicament in 1921	2
	(2) The International Shoe Company	7
	(3) Negotiations Leading to the Stock Transfer	9
	(4) The Stock Acquisition Contract	10
IV.	Specification of Errors	10
V.	The Argument	11-23
	Summary of Argument	11
	1. The Complaint Is Insufficient	12
	2. The Court of Appeals Misconceived Its Duty	13
	3. There Was No Substantial Competition	14
	4. The Insolvency of the McElwain Company	15
	5. The Transaction Did Not Lessen Competition or Restrain Trade	19
	6. Decision of the Court of Appeals Is in Conflict with Authoritative Decision on the Sherman Act	20
	7. Conclusion	22
	Appendix	26

TABLE OF STATUTES AND CASES

STATUTES

Bankruptcy Act, Definition of Insolvency (Title 11, U. S. C., Sec. 1(15), page 243 ..... Appendix

Clayton Anti-Trust Act, 38 Stat. 730:

Sec. 7. ..... Appendix

Sec. 11 1

Page

Federal Trade Commission Act, Sec. 5, Paragraph 3 13
Judicial Code, Sec. 240, Amended Feb. 13, 1925, Now Sec. 347, Title 28 U. S. C. 2
Massachusetts Statutes:
(Filing of Corp. Report), General Laws 1921, Chap. 156, Sec. 46 5
(Insolvency Definition), General Laws, 1921, Chap. 106, Sec. 65(3) 17

CASES

American Press Association v. United States, 245 Fed. 91 20
Federal Trade Commission v. Curtis Publishing Co., 260 U. S. at 580 13
Federal Trade Commission v. Gratz, 253 U. S. 421 13
Federal Trade Commission v. Western Meat Co., 272 U. S. 554 2
Holbrook v. International Trust Co. (1915), 220 Mass. 150 16
International Shoe Company v. Federal Trade Commission, 29 Fed. (2d), 518 1
Lee v. Kilburn (1854), 3 Gray, 594 16
Peabody v. Knapp (1891), 153 Mass. 242 16
Steel v. Commissioner of Banks (1922), 240 Mass. 394 16
Thatcher Manufacturing Company v. Federal Trade Commission, 272 U. S. 554, 5 Fed. (2d), 615 20
Thompson v. Thompson (1849), 4 Cush, 127 16
United Shoe Machinery Co. v. United States, 258 U. S. 451 20
United States v. Oklahoma, 261 U. S. 263 17
United States v. United States Steel Corporation, 251 U. S. 417 21
Vennard v. McConnell (1866), 11 Allen, 555 16

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. ———

INTERNATIONAL SHOE COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST CIRCUIT.

I

THE OPINION OF THE COURT BELOW

The opinion of the Court of Appeals is reported in 29 Fed. (2d), 518.

II

JURISDICTION

Petitioner filed a petition in the Court of Appeals for the First Circuit to review an order of the Federal Trade Commission based upon a finding of a violation of Section 7 of the Clayton Anti-Trust Act (38 Stat. 730). The jurisdiction of the court below was invoked under the authority of Section 11 of the

Act. The Court of Appeals affirmed the order of the Commission on November 27, 1928 (R. 735).

The jurisdiction of this Court is invoked under Section 11 (paragraph 5) and under Section 240 of the Judicial Code as amended by the Act of February 13, 1925, which now is Section 347, title 28 U. S. C. (*Federal Trade Commission v. Western Meat Co.*, 272 U. S. 554)

III

Statement of the Facts

(1) The McElwain Company, and its Financial Predicament in 1921.

The W. H. McElwain Company was a Massachusetts corporation with its principal place of business in Boston. It had outstanding capital stock of the par value of approximately $14,000,000 (R. 250). Its shoe factories, situated in New Hampshire, had a capacity of about 38,000 pairs per day (R. 449). It produced only dress shoes for men and boys (R. 215).

In 1920 there was an abrupt decline in the price of leather products which caused the Company heavy inventory losses and rendered its finished shoes unmarketable at profitable prices.

The changed situation is made clear by comparing conditions in 1920 and 1921 with respect to (a) production, (b) sales and (c) working capital.

(a) The production (stated in pairs) during the first five calendar months was as follows (Rec. 687; Ex. No. 39):

1920	1921	Decrease	% Decrease
3,230,347	932,497	2,297,850	71%

(b) The volume of sales during the first five calendar months was as follows (Rec. 687; Ex. No. 40):

1920	1921	Decrease	% Decrease
$16,246,941	$3,794,522	$12,452,419	76%

(c) The progressive depletion of its working capital as shown by the balance sheets for May 30, 1920 (R. 655), February 28, 1921 (R. 645), April 30, 1921 (R. 612), May 31, 1921 (R. 656) and November 30, 1921 (R. 657), is here indicated:

	Current Assets	Current Liabilities	Working Capital
May 30, 1920	$26,191,649.45	$12,687,728.82	$13,503,920.63
Feb. 28, 1921	26,894.457.41	17,330,596.89	9,563,860.52
Apr. 30, 1921	21,448,783.64	17,177,349.25	4,271,434.39
May 31, 1921	19,403,715.88	15,880,901.42	3,522,814.46
Nov. 30, 1921	12,735,599.14	13,701,494.37 (Deficit)	965,895.23

On May 30, 1920 (R. 655) the balance sheet shows a surplus of $3,888,440.73; on April 30, 1921 (R. 612-3), there is a deficit of $3,425,217.23—a loss in condition during 11 months of $7,313,657.96.

The balance sheet for April 30, 1921 (R. 612), shows current assets of $21,448,783.64, but of this amount $10,275,521.43 included the inventory value of shoes for which there was no sale—customers had cancelled orders to the extent of $7,000,000, and $8,-028,082.41 represented customers accounts, and it had cash on hand of $2,172,345.16. On April 30, 1921, the company owed in current accounts $1,958,349.25, and in unsecured notes held by the banks in New England $15,219,000—a total current indebtedness of $17,-177,349.25 (R. 612).

Mr. Stanley King testified (R. 287): "The financial condition of the W. H. McElwain Company at that time [i.e. April 5, 1921] was practically insolvent and in my opinion at that time, which I still hold, the company would have been actually insolvent upon the publication of those figures".

Mr. Rand, referring to what took place at the final

conference before the contract of purchase was agreed upon, said (R. 90): "We discussed and discussed that [i.e. the financial condition of the McElwain Company] with Mr. King and Mr. McElwain and all of us were conscious of the fact that the company in this financial condition, with a liability on April 30th of $17,177,000 could not keep its doors open 30 days longer".

Mr. Johnson testified that, at the conclusion of a conference in Boston in the latter part of April, he told the executives of the McElwain Company that they were "broke" (R. 153).

Mr. Dwinnell testified (R. 341) that in his opinion the purchase by the petitioner resulted in the payment of $15,000,000, or $16,000,000 worth of debts which would not otherwise have been paid.

Mr. Gray, auditor of the International Shoe Company, testified (R. 199) that between May and November 30, 1921, the petitioner advanced to the McElwain Company $11,850,000, which advances alone prevented the actual liquidation of the Company.

The cause of this state of affairs and its consequence to the business was stated by the President of the McElwain Company in a letter to the stockholders under date of May 24, 1921, recommending the sale of the stock to the petitioner (R. 562-3):

> "Your Company has suffered a severe setback during the last few months, owing to a cessation of buying, an unparalleled wave of cancellations and an unprecedented slump in leather values.
>
> "In the Spring of 1920 our total factory capacity was oversold twenty-five per cent. to December 1, 1920. To cover these sales we protected ourselves by the purchase of hides only to the extent that seemed prudent.
>
> "But beginning in August cancellations and returns began to come in until within a comparatively short time they amounted to over $7,000,-

000. New orders also became practically unobtainable. Meanwhile our merchandise on hand consisting of manufactured shoes awaiting delivery dates, merchandise in process in our shoe factories and tanneries and raw hides dropped in value day by day. Sole leather hides fell to one-fourth of their previous value and upper leather hides to one-third of their value as of July 1st.

"We have just taken within the fortnight a special interim inventory reducing all raw, in-process and finished merchandise to sound value as of today. We find losses for the current year of $6,472,000. We also find that due to these inventory losses and factory losses, to the payment to the Government of $1,000,000 in Income and Excess Profits Taxes, additions to plant, retirement of preferred stock, dividends paid during earlier months of the year, and several other similar items, our working quick capital has been seriously reduced.

"While our banks have not yet restricted our credits, we realize that it is not the function of the banks to supply permanent working capital and that the duty and necessity has rested upon us to reduce our bank loans as rapidly as possible until they come within the compass of our reduced resources.

"But with the liquidation completed it became clear that our restricted working capital and our reduced bank accommodations held out no practical opportunity to operate our factories or to conduct our business on a sufficient scale to afford reasonable expectation of profit."

The situation necessitated prompt action. The Company's fiscal year ended May 31 (R. 286). The Massachusetts statutes (Generals Laws 1921, Chap. 156, sec. 46) require of business corporations "a report of condition which shall be signed and sworn to by its president, treasurer and a majority of its board of directors." This must be filed within 30 days

after the date of the annual meeting or the final adjournment thereof. When filed it is open to public inspection. Here the report for 1921 contrasted with that for the year preceding, would have exhibited these changes:

	Excess of current assets over current liabilities	
May 31, 1920	$13,500,000	(R. 655)
May 31, 1921	3,593,000	(R. 656)
Loss on operations for the year	$ 9,907,000	
	Profit and Loss	
May 31, 1920—Surplus	$3,888,440	(R. 655)
May 31, 1921—Deficit	4,382,136	(R. 656)
Loss in condition	$8,270,576	

The officers and directors struggled with the situation almost daily during the early months of 1921 (R. 285). The President of the Company, Mr. J. F. McElwain, discussed the condition at length with Mr. C. H. Dwinnell, Vice President of the First National Bank of Boston, which held the Company's notes in the amount of $1,000,000 (R. 339-341). That bank was unwilling to grant an extension (R. 343).

The other notes were held by 23 national banks of deposit, and 44 savings banks, and $2,500,000 had been discounted by note brokers to purchasers whose identity is not shown (R. 285). Because of the great number of banks holding the notes and the necessity for quick action, it was impossible to obtain an extension (R. 340). Mr. McElwain attempted to enlist new capital through Lee, Higginson & Co., but was unsuccessful (R. 339-40). In the final analysis the alternatives were a receivership or sale of the business (R. 340).

Early in March the directors authorized two of their number, Messrs. McElwain and King, to open negotiations with petitioner (R. 287-8), as the only possible purchaser in the United States. Up to this time there had been no connection between the two companies and the officers and directors of the petitioner had no knowledge of the foregoing facts respecting the McElwain's Company's financial condition (R. 148).

(2) The International Shoe Company

The petitioner is a Delaware corporation, with its principal place of business in St. Louis. In 1921 it had outstanding preferred stock of the aggregate par value of $12,250,000 and 765,000 shares of common stock without par value (R. 572) and of the actual value of $30 per share (R. 564). It owned and operated 32 shoe factories all in the states of Missouri, Illinois and Kentucky with a total daily capacity of about 70,000 pairs (R. 500), but its production of dress shoes for men—the only kind of which complaint is made in this proceeding—did not exceed 3,000 pairs daily (R. 450).

In the spring of 1921 its trade position was the antithesis of that of the McElwain Company. It had no unpaid indebtedness in the form of notes or bonds; its credit and capital resources were more than sufficient to meet its requirements. Further, it had on its books orders for shoes greatly in excess of its capacity to produce; in the period from January 1 to May 31, 1921, it or its customers cancelled orders to the extent of $11,395,000 (R. 156, 7) owing to its inability to make prompt deliveries. It had an urgent need for an immediate expansion in its production. Mr. Rand, President of the Company, testified (R. 49) that it required approximately two and one-half or three

years to build a new factory, and bring it to an orderly process of production.

There Was No Substantial Competition.

The only witnesses who were examined as to competition testified positively, and without contradiction, that there was no substantial competition.

Mr. Rand, President of the International Shoe Company, said (R. 68): "I cannot recall of an instance in which we had McElwain shoes called to our attention in a competitive way, from the standpoint of price or quality".

Mr. Johnson, Chairman of the Board, testified to the same effect (R. 160-1).

In the letter of President McElwain to the stockholders of the McElwain Company (R. 564), quoted above, it is said: "They [i.e. petitioner] have sought primarily to distribute their products in the great agricultural and mining districts of the country; we enjoy a large business from retailers in large cities. Separately there has been little conflict in our respective fields of activity; we compete only on the fringe".

Mr. Johnson testified (R. 166) that 95% of petitioner's sales were made in small towns; "from the cross-road store up to towns of five or six thousand". Over 95% of the McElwain Company's sales were in cities having a population of over 10,000 (R. 704; Ex. 47).

The trade policies of the two concerns were directly contrary to each other. The petitioner sold exclusively to retailers under its own brands (R. 50); while the McElwain Company sold largely to jobbers and wholesalers (R. 666-7; Ex. 37), and, whenever requested so to do, placed the name of the customer on the shoes (R. 283). The petitioner's refusal to follow this practice prevented it from securing the custom of the large retailers (R. 161).

During the year preceding May, 1921, the McElwain Company sold shoes to about 600 retail dealers (R. 670; Ex. 37), while the petitioner had as customers 78,242 retailers (R. 504; Finding Eight). And during the period petitioner's total sales of men's dress shoes to retailers on the McElwain list was 52 5/12 dozen pairs (R. 434).

(3) The Negotiations Leading to the Stock Transfer

In the latter part of March, and while Mr. Rand, president of petitioner, was in Mexico, Messrs. McElwain and King, without previous notification, arrived in St. Louis and opened negotiations (R. 147-8). After preliminary conferences which covered a period of 30 days were out of the way, the foregoing condition was revealed, and the officers of the petitioner were satisfied that the McElwain Company was "broke" (R. 153).

The representatives of the McElwain Company urged the petitioner to purchase the assets at their real value without reference to shares of stock or the indebtedness (R. 90). The petitioner refused to do this, on the ground that it would have impoverished the holders of the common stock, which group included the active managers of the Company's business (R. 89). In President McElwain's letter to the stockholders (R. 564-5), quoted above, he said: "The International Shoe Company have not been willing to make an offer to purchase outright the assets of our Company, but they have said that if they could maintain the continuity and the goodwill and the management of our Company, which they felt could be assured only by the purchase of our three classes of stock, they would be willing to do so but upon no other basis would they consider an amalgamation of the interest of the two companies."

(4) The Stock Acquisition Contract

The net value of the assets was agreed upon as being $9,470,832.50 (R. 620). This was then commuted into the price of shares of stock (R. 92), so that the aggregate sum for all the shares would equal the agreed value of the assets. By the contract executed May 11, 1921 (R. 616) the directors of the McElwain Company agreed to sell their shares and to procure the sale of the remaining shares, and the petitioner agreed to purchase all the outstanding shares, at the respective prices named, and pay therefor in cash or in shares of the International Shoe Company at the seller's option. The contract imposed no restraint upon the freedom of the sellers to re-enter the business, and the record shows (R. 536) that several former principal executives of the McElwain Company re-entered the shoe business in New England before the complaint was filed.

IV.

Specification of Errors.

It is submitted that the Court below erred:

(1) In failing to sustain petitioner's motion to dismiss the proceeding because of the insufficiency of the Commission's complaint.

(2) In holding that there was substantial competition between the two corporations at the date of the stock acquisition.

(3) In failing to hold that, in contemplation of law, the insolvency of the McElwain Company put an end to its ability to compete with any one.

(4) In finding that the McElwain Company was in fact capable of continuing business; the conclusion rests entirely upon supposition.

(5) In applying the Bankruptcy Act definition of insolvency as decisive of the case and ignoring the definition of insolvency as established by the law of Massachusetts.

(6) In failing to hold that Section 7 of the Clayton Act has no application to the acquisition by one corporation of the stock of an insolvent corporation, where, on the part of the seller, the transaction is the only escape from liquidation.

(7) In disregarding throughout the decisive facts, the object, intent and purpose of both seller and purchaser, and the actual effect of the transaction on the shoe industry, and in substituting therefor inferences not supported by the evidence.

(8) In disregarding controlling decisions of this Court and of the Circuit Court of Appeals, construing the Clayton Anti-Trust Act.

V.

THE ARGUMENT.

Summary of Argument

(1) The complaint is insufficient. If for its vague conclusions, a statement of the facts that induced the transaction is substituted, it is obvious there was no grievance to be corrected.

(2) The Circuit Court of Appeals affirmed the order of the Federal Trade Commission on the erroneous theory that its findings, even though drawn from inferences and not evidence, were binding on the Court and it could not examine the evidence and determine that the evidence did not support such findings and justify the order of the Commission.

(3) There is no evidence of substantial competition

at the time of the transaction, hence no basis for the order.

(4) The evidence is conclusive that the financial condition of the McElwain Company at the time of the transaction was such it had to sell or liquidate, hence its activities in the shoe manufacture were ended.

(5) Disregarding the fact of insolvency and insolvency as defined by the law of Massachusetts and resorting to the Bankruptcy Act definition of insolvency, is all that gives color to the finding of substantial competition. The condemnation of petitioner is grounded upon the Bankruptcy Act test; that test is irrelevant to the proceeding.

(6) The transaction as made was the acquisition of the assets of the McElwain Company as a part of the organization of the International Shoe Company. The stock purchase was to save the business, the executives and the operators,—not to lessen competition or restrain commerce.

(7) The Commission's grievance is confined to the form of the transaction, which otherwise is admitted to be free from challenge. No action was taken for two years after the widely heralded absorption of the McElwain assets, during which period petitioner advanced $11,000,000 to discharge the debts and keep the properties going. The Commission then filed its complaint because the petitioner acquired its equity in the debt burdened assets in the form of stock certificates instead of a bill of sale. The objection is a pure technicality.

1. The Complaint Is Insufficient.

The requisites of a complaint by the Commission when proceeding under authority of the Clayton Act are the same as when it proceeds under the Federal

Trade Commission Act. Paragraph 2 of Section 11 of the Clayton Act (prescribing the essentials of a complaint) is a rescript of Paragraph 3 of Section 5 of the Federal Trade Commission Act. In *Federal Trade Commission v. Gratz*, 253 U. S. 421, which was a proceeding under the Federal Trade Commission Act charging "unfair competition", this Court held the complaint insufficient and declined to review the evidence on which the Commission and the Court of Appeals had acted. The Court said (page 427):

> "If, when liberally construed, the complaint is plainly insufficient to show unfair competition within the proper meaning of these words, there is no foundation for an order to desist,—the thing which may be prohibited is the method of competition specified in the complaint. Such an order should follow the complaint; otherwise it is improvident, and, when challenged, will be annulled by the court."

Section 7 only prohibits stock acquisition "*where* the effect may be" to substantially lessen competition, restrain trade or tend to create a monopoly. Here the complaint fails to state facts which, if proved as laid, would empower the court to find that the forbidden effect was accomplished.

2. The Court of Appeals, in holding its jurisdiction did not permit it to go behind the findings of the Commission based on inferences (contradicted by evidence and not justified thereby) has overlooked its province and duty as stated by this Court in *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S., at page 580 where it says:

> "Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive. But, as the statute grants jurisdiction to make and enter, upon the pleadings, testimony, and proceed-

> ings, a decree affirming, modifying, or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented, and whether there are material facts not reported by the commission. If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be, remanded to the commission,—the primary fact-finding body,—with direction to make additional findings; but if, from all the circumstances, it clearly appears that, in the interest of justice, the controversy should be decided without further delay, the court has full power under the statute so to do. The language of the statute is broad, and confers power of review not found in the Interstate Commerce Act."

3. THERE WAS NO SUBSTANTIAL COMPETITION.

As to the alleged competition the Commission's Finding (R. 502), which is quoted and approved by the Court of Appeals without any analysis of the testimony, is an inference which is wholly unwarranted by the undisputed facts.

The finding is that the petitioner sold men's dress shoes "*similar in style,* comparable in price and *equal or superior in quality* to the men's high and low dress shoes produced by the McElwain Company". And "both companies made and sold *medium priced dress shoes* and sold such shoes to retail dealers *in the same States, and in many of the same cities* and towns, and *in some instances to the same dealers*". All these generalities are consistent with the absence of substantial competition and altogether insufficient to show it. The only witnesses who were examined as to competition testified positively and without contradiction that there was no substantial competition.

The record shows that by "similar in style" is meant that both concerns made high shoes and low cuts (R.

330). With respect to quality Mr. Johnson was asked (R. 171) if the men's dress shoes of the petitioner "were just as good as those shoes made and sold by the W. H. McElwain Company". His answer was: "I think they were better, *that is from the standpoint of service,* but the unfortunate part of it is we could never convince the retailer who catered to city or dressy wear, we could not convince him of that fact,—the fact that our company travelled five hundred men and we were able to sell only three thousand pairs a day and that would be a maximum I think of our Patriot shoe".

Substantial competition is a fact, susceptible of direct proof;—it does not rest on inferences. The fact that two manufacturers make men's dress shoes, one as its sole product, the other a small part of its output;—where the shoes are differently constructed and sold to different classes of customers, largely in different classes of towns, does not prove competition, even though 16 merchants in the United States purchase shoes from both manufacturers.

Both the Commission and the Court of Appeals ignore this testimony and these facts which are undisputed.

4. Insolvency of the McElwain Company.

Moreover, both tribunals take the course of the McElwain Company's business when it was solvent as the basis for the inference of substantial competition after it was insolvent; they completely ignore the change that came about from May, 1920, to May, 1921.

As to the financial condition of the McElwain Company, neither the Commission nor the Court of Appeals controverts the facts as summarized above; but in spite thereof, both find that in May, 1921, the Company was not insolvent within the meaning of the Bankruptcy Act.

Thus in its Findings (Paragraph 24; R. 512-3) the Commission takes the book value of all the assets (including real estate and plants at approximately $5,000,000) shown on the balance sheets and deducts therefrom the current indebtedness and concludes that "the property of the W. H. McElwain Company" * * * "exceeded its debts by" the amount of the remainder. Summarizing the computations thus made the Finding concludes with this: "At and prior to the acquisition by respondent [i. e. petitioner here] of the stock or share capital of the W. H. McElwain Company the aggregate of the property of W. H. McElwain Company, at a fair valuation, was more than sufficient in amount to pay its debts. W. H. McElwain was not insolvent prior to the acquisition of its stock or share capital by the respondent, nor subsequent thereto".

Affirming this, the Court of Appeals says: "The Commission expressly found that the McElwain Company was not insolvent within the Bankruptcy Act definition. Plainly it was not".

Both tribunals make this negative finding decisive. However, the Company's business activity was circumscribed by the law of Massachusetts and by that law the Company's inability to pay its debts as they became due subjected it to involuntary liquidation proceedings for the benefit of creditors, whether it was insolvent within the meaning of the Bankruptcy Act or not.

For several decades the courts of Massachusetts have held that a trader is insolvent who either has ceased to pay his debts in the ordinary course or cannot pay his debts as they become due. *Thompson v. Thompson* (1849), 4 Cush. 127, 134; *Lee v. Kilburn* (1854), 3 Gray, 594, 600; *Vennard v. McConnell* (1866), 11 Allen, 555, 561; *Peabody v. Knapp* (1891), 153 Mass. 242, 244; *Holbrook v. International Trust Co.* (1915), 220 Mass. 150, 155; *Steele v. Commissioner of Banks* (1922), 240

Mass. 394, 397. And this definition was enacted as a part of the law of sales of personal property. The statutory definition is as follows (General Laws 1921, Chap. 106, sec. 65 (3)): "A person is insolvent who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not".

This Court has held that the two definitions of insolvency, viz. of the Bankruptcy Act and that by the law of Massachusetts, import different meanings and that each obtains within the realm of the authority enacting it. *United States v. Oklahoma*, 261 U. S. 253, 261.

Neither tribunal mentions the law of Massachusetts; neither denies the inability of the Company to pay its debts as they became due, neither tribunal explains how the Company's debts could have been paid without the sale of its factories and the discontinuance of the business.

The Commission does not attempt to suggest how the Company could have continued its business, but the Court of Appeals say there were "several alternatives", of which three are stated:

> "(a) The McElwain Company's bank creditors might have carried the concern, just as at that time the banks were carrying a very large percentage of the business concerns in this community. It was a period of 'frozen credits', a time when there was practically a conceded moratorium to a large share of our business concerns, which competed fiercely for rehabilitating trade.
>
> (b) If a receivership had been found a necessary expedient, competition under receivership management would have been likely to be intensified, not eliminated.
>
> (c) In case of actual bankruptcy, the holders of

the preferred stock (one or both classes) would in their own interest have taken over the property, kept it in active operation and therefore in competition."

Each alternative stated by the Court presupposes the inability of the Company to pay its debts as they became due; and the tenability of each alternative is tested by the facts shown of record.

As to (a) the First National Bank of Boston, holding the Company's notes in the amount of $1,000,000, was unwilling to renew or extend them (R. 343). While the representatives of the other banks did not testify, no doubt the banks were in accord on the matter, for in the President's letter to the shareholders (R. 564), quoted above, he said: "While our banks have not yet restricted our credits, we realize that it is not the function of the banks to supply permanent working capital and that the duty and the necessity has rested upon us to reduce our bank loans as rapidly as possible until they come within the compass of our reduced resources". That the banks exacted payment shortly is indicated by the balance sheet for November 30, 1921 (R. 657), which shows advances by the petitioner of $11,000,000 and a reduction of $13,000,00 in the debts since May 31 (R. 656).

As to (b) it is not suggested how "receivership management" could have "intensified" competition. In order to compete, the shoes must be produced and sold at a profit, otherwise losses mount still higher.

To the McElwain officials, who were capable, experienced and deeply interested, the situation "held out no practical opportunity to operate our factories or to conduct our business on a sufficient scale to afford a reasonable expectation of profit" (R. 654; letter to stockholders quoted above).

As to (c) the record shows that throughout the negotiations the First Preferred stockholders were repre-

sented by Mr. James J. Storrow of Lee, Higginson & Co. (R. 293). Beneath the signature of the petitioner and the McElwain directors to the contract of purchase (R. 619) is this:

> "We approve of the above agreement and agree to use our best efforts to secure the acceptance of it by the holders of the First Preferred stock of W. H. McElwain Company.
>
> Lee Higginson & Co."

The second preferred shares were held by the directors who signed the contract and by the employees of the Company.

All the alternatives imagined by the Court of Appeals, and perhaps others, are envisaged in the letter to the stockholders (R. 564) quoted above: "In these circumstances your officers and directors have studied various plans of securing additional capital, all of which have been carefully weighed and analyzed with Messrs. Lee Higginson & Co. and in conference with our banks".

And all three alternatives can be measured by the actual experience of the business as conducted by petitioner. It "carried" the McElwain Company, it paid the indebtedness; it took over the property and "kept it in active operation", with the result that from May 31, 1921 (R. 656) to November 30, 1921 (R. 657) the operating capital of $3,522,814.46 completely disappeared from the balance sheet and the deficit of $4,382,-136.70 was increased to the sum of $9,103,076.59.

The experience of the International Shoe Company shows that the McElwain Company's business when operated could not pay its debts.

5. The Transaction Did Not Lessen Competition or Restrain Trade.

The decision of the Court of Appeals is in conflict with a ruling of this Court in *Thatcher Manufacturing*

Company v. Federal Trade Commission, 272 U. S. 554.

That was a proceeding under Section 7 of the Clayton Act, charging the Thatcher Company with unlawful acquisition of the stock of several corporations, among which was the Woodbury Glass Company. The Court of Appeals (5. Fed. 2d) 615, l. c. 622) held that the acquisition of the stock of the Woodbury Company did not violate Section 7, for the reason that at the time the Woodbury Company was gradually getting out of business and that "indeed before the transaction in question arose it had determined to do so".

With reference to that acquisition this Court said (page 560):

> "The court below held that the last named company [i.e. Woodbury Glass Company] was not in competition with petitioner within the meaning of the statute and modified the order accordingly. Therein we agree and to that extent affirm its decree."

6. While it is true, as the Court of Appeals says, that the Sherman Act and the Clayton Act provide different tests of liability (*United Shoe Machinery Co. v. United States,* 258 U. S. 451, 459), in that the latter prohibits stock acquisition, the Clayton Act does not change the meaning of the terms "substantial competition", "restraint of trade" and "monopoly".

Further, the existence of substantial competition is a necessary condition of liability under each statute, and the absence of such competition here, owing to the insolvency of the McElwain Company, renders both enactments inapplicable. On this ground we submit the decision of the Court of Appeals is in conflict with the principles laid down in cases under the Sherman Act.

The case of *American Press Association v. United States,* 245 Fed. 91, was decided by the Court of Ap-

peals for the Seventh Circuit. The situation was this. In 1912 the Government brought suit against the American Press Association, the Western Newspaper Union and others under the Sherman Anti-Trust Act and obtained a decree by which the Western Newspaper Union was permanently enjoined from combining with the American Press Association "either by purchase, stock ownership or in any other manner".

But circumstances greatly changed. In 1917 the American Press Association was conducting its business at a loss of over $3000 per month and was practically bankrupt. It petitioned the District Court for permission to sell the property as a going concern to the Western Newspaper Union. The District Court denied the petition. The Court of Appeals reversed the decision of the District Court and in the course of its opinion said (page 93):

> "The American Company is forced to go out of the plate business. No decree can stop that. And after the American Company quits, if the Western is left alone in the field, the ultimate situation of the country newspapers would be the same whether the plant be scrapped or sold as an integer. Neither the decree, nor in our judgment, the Sherman law prevents the Western from buying the scraps piecemeal. If it did buy, it could organize them anew. If permitted to buy the integer, it would save the expense of reorganization. If the plant be scrapped two injuries result; one to the public from the destruction of a usable and useful plant; the other to the stockholders of the American Company."

In the case of *United States v. United States Steel Corporation*, 251 U. S. 417, the Court had before it as one phase the purchase by the defendant of the Tennessee Coal and Iron Company. Concerning this acquisition the Court said (pages 446-7):

"There is, however, an important circumstance in connection with that (i.e. acquisition) of the Tennessee Company which is worthy to be noted. It was submitted to President Roosevelt and he gave it his approval. His approval, of course, did not make it legal, but it gives assurance of its legality, and we know from his earnestness in the public welfare he would have approved of nothing that had even a tendency to its detriment. And he testified he was not deceived and that he believed that 'the Tennessee Coal and Iron people had a property which was almost worthless in their hands, nearly worthless to them, nearly worthless to the communities in which it was situated, and entirely worthless to any financial institution that had the securities the minute that any panic came, and that the only way to give value to it was to put it in the hands of people whose possession of it would be a guaranty that there was value to it.' Such being the emergency, it seems like an extreme accusation to say that the corporation which relieved it, and, perhaps, rescued the company and the communities dependent upon it from disaster, was urged by unworthy motives. Did the illegality attach afterwards and how? And what was the corporation to do with the property? Let it decay in desuetude, or develop its capabilities and resources? In the development, of course, there would be profit to the corporation, but there would be profit as well to the world. For this reason President Roosevelt sanctioned the purchase and *it would seem a distempered view of purchase and result to regard them as violations of law.*" (Italics ours.)

7. Conclusion.

From first to last there is nothing in the procedure and in the consequences of the transaction that invites the denunciation of the law. We submit if this were a proceeding under the Sherman Act, there is no step in the dealings between the parties that would be

challenged by any provision of that act as construed by this Court.

The sole question therefore turns upon the particular provision of Section 7 of the Clayton Act. Broadly speaking, there may be a vague competition between all the 1500 concerns engaged in making shoes. To guard against so attenuated a test, the statute requires that only a substantial lessening of competition shall be ground for complaint. We submit that essential competition cannot be based upon the circumstance that at some remote points the trade of the two concerns came in contact, involving nothing more than a negligible number of pairs of shoes. Furthermore, the condition of the McElwain Company was such as to preclude the possibility of any competition then or thereafter.

In all respects the transaction itself was fair, open, without the suggestion of oppression or sinister purpose. So much is admitted by counsel for the Commission (R. 131-2).

Apart from the question of competition, a transaction otherwise not subject to challenge, is attacked solely because the assets were acquired by a purchase of shares. It is true that in this respect the Clayton Act presents a question that would not arise under the Sherman Act. The decisions of this Court make it clear that the mere purchase of shares does not constitute an offense. It is the ultimate purpose and effect that controls.

This Court has said that where the purchase of shares has been followed by the acquisition of title to the assets before the Commission moves, there is no more ground for complaint, regardless of the question of competition. As a means of approach to securing title to assets, the purchase of shares is not improper. In this case it is true, technically the title to

assets was not obtained until after the complaint was filed; and strictly speaking, such a case has not been passed upon by this Court. But it is also true that in this case the assets of the McElwain Company had been absorbed and, to all intents and purposes, used by petitioner as owner. The two properties were amalgamated and openly used as one for two years before the complaint was filed. Holders of 50 shares of preferred and 35 shares of common stock held out, and the formality of passing technical title and the admitted purpose to dissolve the corporation had been delayed. So soon as complaint was made, the technical omission was corrected. The one evil complained of was cured; in the only way in which this could at that stage be done.

Much is made in the record of the manner in which the sale of assets was effected. We respectfully submit that this discussion serves no practical purpose. If the company had the right to sell, the method adopted does not touch the merits of the transaction.

Should this Court hold that the technical transfer came too late to defeat the complaint, there is still the question of the relief to be ordered. The Commission's order, effective May 7, 1927, (six years after the transaction) calls upon petitioner "to divest itself of the stock of the McElwain Company, and to cease and desist from the ownership, operation and management of the properties formerly owned by the McElwain Company."

It is respectfully submitted that this order is incapable of performance. There is no stock and there are no takers. So much is obvious. Petitioner would be the only purchaser. The order to desist from the ownership and management of the properties is futile. If petitioner is the owner (and this the order presupposes) then the general purpose and the technical re-

quirements of the law have been met. If the order contemplates (what it does not say) a re-sale of the properties, then it can accomplish nothing of practical value, for the obvious reason that they would have to be offered subject to the debts which petitioner now controls. A re-instatement of the situation, it is submitted, embraces debts as well as properties. It stands to reason that purchasers who desisted in the beginning would be more reluctant now to assume such obligations. The financial embarrassment of the concern must deter any outside investor from engaging in it, only a going concern in immediate and pecular need of the facilities offered, and prepared to pay correspondingly for them what no one else could be induced to give, would consider the proposition. This is the sole explanation for the prompt purchase by petitioner at a price that advantageously salvaged the properties for all concerned, instead of waiting to take them at ruinous figures after the inevitable crash. It must be apparent that at any sale the petitioner would be the only bidder. The result would be that the title which it now holds would be confirmed. It would be an empty performance.

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Appendix.

1. Section 7 of the Clayton Anti-Trust Act (paragraphs 1 and 3):

> "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."
>
> "This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition."

2. The Bankruptcy Act Definition of Insolvency (Title 11, U. S. C., Sec. 1 (15), page 243):

> "a person shall be deemed insolvent within the provisions of this title whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to hinder, defraud or delay his creditors, shall not at a fair valuation, be sufficient in amount to pay his debts;"

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. 42

INTERNATIONAL SHOE COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

REPLY BRIEF OF THE INTERNATIONAL SHOE COMPANY TO THE BRIEF FOR THE FEDERAL TRADE COMMISSION FILED APRIL 5, 1929.

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(34,027)

INDEX.

Subject Index.

	Page
Reply brief of the petitioner:	
Questions of law presented	2
Statement	3
Argument	8

Table of Cases Cited.

American Press Association v. United States, 245 Fed., 91	2
Federal Trade Commission v. Thatcher Mfg. Co., 5 Fed. (2d), 622; aff'd 272 U. S., 560	2
United States v. United States Steel Corporation, 251 U. S., 417, l. c., 446, 447	2

Statute Cited.

Clayton Act. Sec. VII	2, 3

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. 718.

INTERNATIONAL SHOE COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

REPLY BRIEF OF THE INTERNATIONAL SHOE COMPANY TO THE BRIEF FOR THE FEDERAL TRADE COMMISSION FILED APRIL 5, 1929.

The Petitioner does not agree with the Respondent that only two questions of law are presented, but says that, in addition to the two suggested by the Respondent, the following are presented:

A.

Where the undisputed evidence is that no substantial competition exists between two manufacturers, is the purchase of the share capital of one by the other a violation of the Clayton Act?

B.

At the time of the acquisition of the share capital of one corporation by another, if its financial condition is such that it can not continue to carry on its business but is faced with a liquidation or sale of its assets, then is the purchase of such share capital, with no consequences inimical to the public interest, a violation of Sec. VII of the Clayton Act?

C.

The interpretation of Sec. VII of the Clayton Act by the Circuit Court of Appeals for the First Circuit is in direct conflict with interpretation of Sec. VII of that act by the Circuit Court of Appeals in the case of Federal Trade Commission *v.* Thatcher Mfg. Co., 5 Fed. (2d) 622, paragraphs 6 and 7, which case was affirmed by this Court in 272 U. S. at p. 560. Such decision is also in effect in conflict with the decision of the Circuit Court of Appeals in the case of American Press Association *v.* United States, 245 Fed. 91, and the decision of this Court in the case of United States *v.* United States Steel Corporation, 251 U. S. 417, 1. c. 446, 447.

D.

Where the undisputed evidence shows that the transaction between the two corporations, though in form a stock purchase, is to acquire additional factories and facilities, the additional plants to be operated as a subsidiary of the purchasing corporation, then is such purchase prohibited under Sec. VII of the Clayton Act?

E.

Does not the purchase of the entire share capital of a corporation by another, where it is making such investment for the purpose of increasing its own facilities and not for the purpose of lessening competition, come within Par. 3 of Sec. VII of the Clayton Act and not within Par. 1, where the effect of the purchase is not to restrain commerce and does not tend to create a monopoly?

F.

The evidence in this case as to no substantial competition and insolvency being undisputed, the effect of that evidence presents a question of law not of fact.

Statement.

Counsel for petitioner desires to take issue with the Circuit Court of Appeals on the statement in its opinion "It is not seriously contended that any of the find-

ings of fact of the Commission are unsupported by the testimony."

Petitioner did seriously contend, in paragraphs 3, 5, 6, 7 and 8 of its petition to review the order of the Commission, that its findings as to competition and solvency were without support in the evidence (R. 17, 18, 19, 20, 21), and the same contentions are urged here.

The statements of evidence by counsel for the respondent in their brief are not altogether accurate, and for that reason further statements of the evidence will be made.

At the time of the purchase by the International Shoe Company, the W. H. McElwain Company was not the largest shoe manufacturer in New England. It had been, but at the time of its purchase it was not operating in excess of 28 per cent of capacity and since the previous October its operations had varied from 10 per cent to 30 per cent of capacity (R. 176, 177, 294).

The W. H. McElwain Company manufactured dress shoes for men and boys. It had not manufactured or sold dress shoes for misses (R. 283, 44).

The shoes of the International Shoe Company and the shoes of the McElwain Company were not similar in style, finish or appearance,and did not appeal to the same class of trade (R. 163, 171, 174, 358).

The McElwain Company in the manufacture of shoes used substitutes for leather in its counters, heels and (to some extent) in its inner soles. The International Shoe Company used no leather substitutes. The Mc-

Elwain shoes had a more attractive style, finish and appearance (R. 283, 352, 358).

There was no substantial competition between the two concerns (R. 105, 160, 165, 166).

There is no evidence in the record to justify the statement in the brief, on page 5, that immediately after it acquired stock of the McElwain Company in 1921, all competition between the two companies ceased. There is evidence that the International Shoe Company, after the purchase of the stock, sold the branch houses controlled by the McElwain Company or in which it was interested, to prevent further loss by the operation of such branches (R. 159, 160, 296, 297, 81, 105).

There was no effort whatever made by the International Shoe Company to conceal the sale of the stock to Bennett, Ltd., and the purchase of the assets of the McElwain Company by it, which was done in June, 1923, as stated on page 6 of the brief; but there was a publication made of the sale (R. 303). Also, Mr. King and Mr. Blake went to Washington on June 26, 1923, five days after the sale was consummated, saw one of the Federal Trade Commissioners, explained the details of that transaction in full in an hour and a half statement and answered all questions that were asked (R. 303).

The respondents are also inaccurate in their statement on page 17, wherein they say: "Moreover, the record shows that the McElwain Company's credit had not been restricted; that the McElwain Company had never defaulted in dividends on its first preferred or its second preferred stock."

W. H. Dwinnell, Vice President of the First National Bank of Boston, discussed the financial condition of the W. H. McElwain Company with the executives in 1921 and testified that such condition was very critical; that it was the intention of his bank to ask the McElwain Company to pay its loan, that had been gone over by the executive committee, the loan being a million dollars; that in his opinion it was impossible for them to get additional credit or additional capital and they could not have procured an extension of time for the payment of their then indebtedness; that they were faced with the sale of their assets or a liquidation receivership or bankruptcy (R. 338 to 345).

Mr. Stanley King, Vice President of the McElwain Company and Acting Treasurer at the time of the sale of its stock to the International Shoe Company, testified that the McElwain Company was practically insolvent; that upon publication of its balance sheet (required under the laws of Massachusetts) it would have been actually insolvent; that it was faced with the alternative of the sale of its assets or a liquidation (R. 287, 290).

Mr. King further testified that the merchandise and receivables in the statement of April 30, 1921, were over-valued to the extent of several million dollars (R. 305).

Mr. King testified (R. 223, in answer to Q. 125): "Default had been made in the payment of dividends on second preferred stock." It was with liquidation or sale confronting the McElwain Company that its

directors authorized King and McElwain to negotiate a sale of the Company (R. 287, 288).

The International Shoe Company knew nothing of the condition of McElwain Company or the proposed sale until King and McElwain appeared (R. 148, 149).

We desire to correct the statement of counsel for the respondent on page 18 of the brief:

> "The record clearly shows that the McElwain Company properties had been operated at a profit since petitioner acquired its stock."

The record affirmatively shows that between May 31, 1921, and November 30, 1921, there was a loss of $4,721,076.39 in the operation of the company and the liquidation of part of the McElwain assets (R. 206, 142).

See financial balance sheets quoted in petitioner's brief on p. 3.

The record does not show a profit for the McElwain Company between 1921 and 1923, or thereafter.

The purpose of the International Shoe Company in its acquisition of the McElwain properties was to obtain additional facilities for the manufacture of shoes to meet its requirements (R. 47, 56, 57, 58, 59, 158).

The record further shows that immediately after the International Shoe Company acquired the McElwain Company they converted some of the men's shoe factories into factories producing women's shoes and other factories producing girls' shoes, making a complete line of shoes for the International's requirements, and that the International operated the Mc-

Elwain Company as a part of their business along the lines they had experienced in distributing shoes under their trade name (R. 47).

The record further shows that the International Shoe Company gave orders to the McElwain Company immediately upon the acquisition and took from 56 to 58 per cent of the output of its factories for the International Shoe Company's sales branches (R. 198).

The record further discloses and the Commission found that the price of shoes had been lowered by petitioner.

ARGUMENT.

The International Shoe Company did not initiate the trade with McElwain Company; was not interested in lessening competition, for it had orders for more shoes than its factories could make. It needed additional factories fully manned to make such shoes. So when the McElwain executives approached the International executives, they decided to acquire the needed factories; and under the conditions existing allocated the purchase price to share capital in order to avoid breaking the factory management and operatives in the purchase.

Counsel for the Commission take the position that the purchase of the stock, no matter what its purpose, violated the Clayton Act and the existence of substantial competition is not required under Sec. VII. But how can there be a substantial lessening of competition unless there be substantial competition?

There is no violation of Sec VII if there be no competition—and certainly none was proven in this case except by inferences from the fact that both concerns manufactured shoes and both had done business in several States of the United States. Competition is a fact capable of proof by direct evidence. No witnesses were brought by the Commission to testify that competition did exist. There was not a merchant or customer of either concern, or any of the wholesale houses in which the McElwain Company was interested, called as a witness to testify that the merchandise of the two concerns was sold in competition. The witnesses who did testify, testified that there was no competition.

Had competition existed (which we do not concede in any degree), the testimony in the instant case shows that the McElwain Company was insolvent and that it was in a position where it was forced to liquidate or sell its assets. In this condition, how could the McElwain Company have been a competitor in the shoe business? It had several million dollars worth of shoes and no orders; it had eight million dollars of accounts on its books; which shoes and accounts, according to Mr. King's testimony, were over-stated as to value by several million dollars. It had approximately two and a half million dollars in cash. How could it pay seventeen million dollars of indebtedness? It is true it had some factories; but a sale of those factories to pay its debts, either under receivership or without it, would have put the McElwain Company out of competition and out of business and, as Commis-

sioner Humphrey in his dissenting opinion states, had the International Shoe Company been satisfied to wait sixty days the assets would have fallen in its lap at much less cost. The fact that the International Shoe Company made a bad trade and bought assets which were over-valued and over-stated and paid for them does not establish the solvency of the McElwain Company. The McElwain Company did not fail, but the International Shoe Company had to put up in excess of eleven million dollars to keep it from failing and lost seven or eight million dollars in the operation of the company. According to the Federal Trade Commission, the fact that the International Shoe Company made a bad trade and paid its debts made the McElwain Company solvent. The same view is taken by its counsel. They say McElwain Company could have continued if the International had not taken it over, but they do not suggest *HOW*, or in what medium the debts would have been paid.

There is another phase of this case to be considered, and that is that the International Shoe Company, having purchased all of the shares of stock of the McElwain Company for the purpose of procuring factories for the manufacture of its own line of shoes and immediately converted those factories into an integral part of its business and used them as a subsidiary, does not that take this entire case out of Par. 1 of Sec. VII of the Clayton Act and bring it within Par. 3 of Sec. VII? Is it not the investment by the International Shoe Company in additional factories to be used as a subsidiary not to restrain commerce? The

evidence is conclusive that shoes were manufactured according to International specifications, no substitutes for leather were used, and the shoes were sold through International branches and sales agencies.

The evidence further discloses that the price of shoes was lowered, the output of the McElwain factories was increased, six thousand operatives were put to work, competition was increased, the public was benefited, and a financial catastrophe was averted. No one was injured.

Can it be said that the purpose in the acquisition was to destroy competition or substantially lessen competition between the International and the McElwain Company? The evidence refutes the suggestion and shows that the purpose was not to offend the law in any particular.

Much comment is made in the brief of the respondent in reference to the sale of the stock acquired by the International Shoe Company to Bennett, Ltd., before the filing of the answer in this case and before the Federal Trade Commission acted on it. The comment is not justified, because: first, publicity was given in the newspapers to the transaction; and, second, the information was immediately conveyed to the Commission itself and a full report made of the transaction in June, 1923. In order for the Bennett, Ltd., transaction to be in any manner criticized it is necessary that the acquisition of the stock in the first place should have been an unlawful transaction. If the stock was lawfully acquired, nothing that the International Shoe Company could have done in the Ben-

nett, Ltd., transaction would have made the original transaction unlawful.

Respectfully submitted,

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No. 37

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1936

INTERNATIONAL SHOE COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR PETITIONER.

E 1 Management of properties after stock acquisition P. 19

TABLE OF CONTENTS

		Page
I.	Opinion of the Court Below	1
II.	Jurisdiction	1
IIa.	The Issue in the Case	2
III.	Statement of the Case	4-25
	(A) Parties to the Transaction	4
	(B) Testimony with Respect to Competition	5
	(C) The Situation in 1921	8
	(D) Conferences Leading up to the Transaction	11
	(E) The Contract for the Acquisition of Stock	13
	(F) The Findings and Order of the Commission	21
	(G) The Decision of the Court of Appeals	24
IV.	Specification of Errors	25
V.	Summary of Argument	26
VI.	Argument	27-51
	(1) The Complaint Is Insufficient	27
	(2) The Court of Appeals Misconceived Its Duty Under the Statute	30
	(3) There was no Substantial Competition	31
	(4) The decision is in conflict with the decision in *Thatcher Mfg. Co. v. Federal Trade Commission*, 5 Fed. (2d) 615, as respects the acquisition of the Woodbury Glass Company, which was approved by this Court, 272 U. S. 554	37

E 1 Management of properties after stock acquisition P. 19

Page

(5) Early in 1921 the McElwain Company, by reason of its financial condition, was eliminated as a competitor 39

(6) The ability of the McElwain Company to continue business in 1921 is not to be tested by the Bankruptcy Definition of Insolvency.... 44

(7) The Consequence which the Clayton Act denounces was absent from the Transaction in question 48

(8) Conclusion 48

INDEX OF CASES AND STATUTES

Cases

Aluminum Company v. Federal Trade Commission, 284 Fed. 401..... 39

American Press Ass'n v. United States, 245 Fed. 91 46

Federal Trade Commission v. Curtis Publishing Co., 260 U. S. 568, 580..... 30

Federal Trade Commission v. Gratz, 253 U. S. 421 28

Federal Trade Commission v. Standard Oil Company, 261 U. S. 463..... 33

Federal Trade Commission v. Thatcher Manufacturing Co., 5 Fed. (2nd) 615, 622..... 37

Federal Trade Commission v. Western Meat Co., 272 U. S. 554..... 39

Holbrook v. International Trust Co. (1915), 220 Mass. 150, 155..... 45

Page

Lee v. Kilburn (1854), 3 Gray 594 45
Nash v. United States, 229 U. S. 373, 376 35
Peabody v. Knapp (1891), 153 Mass. 242 45
Standard Fashion Co. v. Magrane-Houston Co., 258 U. S. 346 39
Standard Oil Company v. Federal Trade Commission (1922), 282 Fed. 81, 87 33
Steele v. Commissioner of Banks (1922), 240 Mass. 394, 397 45
Thatcher Manufacturing Co. v. Federal Trade Commission, 272 U. S. 554 ..... 38, 49
Thompson v. Thompson (1849), 4 Cush. 127, 134 .. 45
United Shoe Machinery Co. v. United States, 258 U. S. 451, 459 38
United States v. American Tobacco Co., 221 U. S. 106, 179, 180, 181 34
United States v. Freeman (1845), 3 How. 556, 564 32
United States v. Oklahoma, 261 U. S. 253, 261 45
United States v. United States Steel Corporation, 251 U. S. 417 47
Vennard v. McConnell (1866), 11 Allen 555 45

STATUTES

Clayton Anti-Trust Act (Oct. 15, 1914; 38 Stat. 730):
Section 7 2
Section 11 28
Federal Trade Commission Act:
Section 5, Paragraph 3 28
Definition of Insolvency, Massachusetts General Laws, 1921, Chap. 106, Sec. 65(3) 45

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 42

INTERNATIONAL SHOE COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR PETITIONER.

I.

The opinion of the Circuit Court of Appeals for the First Circuit is reported in 29 Fed. (2d.) 518.

II.

JURISDICTION.

Paragraph 1 of Rule 12 has been complied with in this case and this Court has determined that it has jurisdiction and has granted the Writ of Certiorari (R. 716).

IIa.

The Issue in the Case

This proceeding was brought by the Federal Trade Commission under Section 7 of the Clayton Anti-Trust Act (October 15, 1914; 38 Stat. 730), the first three paragraphs of which are as follows:

> "Sec. 7. No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
>
> "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
>
> "This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the

actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition."

The complaint filed May 18, 1923, charges that the International Shoe Company in May, 1921, acquired the share stock of the W. H. McElwain Company, and that the effect of the acquisition was to substantially lessen competition between the two corporations, to restrain commerce, and to tend to create a monopoly, in the shoe business.

The charge of a tendency to monopoly has been abandoned; the complaint stands upon the first two charges and these are restricted to one class of shoes produced by the International Company.

The defense is (a) that there never was substantial competition between the two corporations and that, therefore, the charge of a substantial lessening lacks foundation; (b) that at the time of the acquisition the financial condition of the McElwain Company was so desperate as to necessitate liquidation or sale, and that, therefore, the prospect for future competition or restraint was entirely eliminated.

There is no charge of a design or intent to violate the statute; indeed, it was conceded during the progress of the hearing that the motive prompting the transaction was altogether proper.

There is no conflict in the testimony with respect to the stock acquisition. That testimony is voluminous and exhaustively presents every phase of the case. From this testimony the Federal Trade Commission has drawn inferences and announced conclu-

sions, which, it is respectively submitted, are not warranted.

The authority of this tribunal is invoked to examine the evidence and the method by which the Commission reached its conclusion, and to determine whether, under the undisputed testimony, the findings and the order were justified.

III.

Statement of the Case.

(All record references are to new paging of record according to record printed by the clerk in this Court.)

(A) Parties to the Transaction.

The transaction in question was had in May, 1921.

The parties were: the International Shoe Company, a Delaware corporation, with headquarters at St. Louis and having outstanding preferred stock of the aggregate par value of $12,250,000 and 765,000 shares of common stock of no par value (R. 588); and the W. H. McElwain Shoe Company, a Massachusetts corporation, with headquarters at Boston, and having outstanding capital stock of the par value of about $13,000,000 (R. 224).

There were in 1921 about fifteen hundred other shoe manufacturers in the United States (R. 71). Among these, the International Shoe Company was the largest in respect of the total number of pairs produced of all kinds and varieties. It owned and operated thirty-two shoe factories situated in Missouri, Illinois and Kentucky, with a total daily capacity of 70,000 pairs (R. 520), which represented about 7.34%

of the country's output (R. 200-1). The McElwain Company was among if not the largest in New England. It had factories situated in New Hampshire (R. 214). Its factories had a rated capacity of from 38,000 to 40,000 pairs per day, but in 1921 it was producing only about 6,000 to 7,000 pairs per day (R. 100), representing about 1.33% of the country's output (R. 200-1.) However, it is conceded throughout that the alleged competition involved only men's dress shoes (Commission's Findings, Paragraph 23, R. 532), that is to say welt shoes suitable for street and office wear in contradistinction to work shoes (R. 221). Such shoes constituted the staple of the McElwain Company (R. 215), but only about 4% (or 3,000 pairs per day) of the International Company's output (R. 168, 467). In New England alone there were at least 10 other manufacturers which equalled or exceeded the International Shoe Company in the production of dress shoes for men (R. 466).

(B) The Testimony With Respect to the Existence of Competition in the Sale of Dress Shoes for Men.

In the effort to show the existence of competition the Commission did not call a customer or a salesman of either concern. The only witnesses examined on the issue were the officers of the petitioner, and they testified that there was no substantial competition.

Mr. Rand, President of the International Company, said (R. 60):

> "I cannot recall an instance in which we had McElwain shoes called to our attention in a competitive way, from the standpoint of price or quality."

Mr. Jackson Johnson, Chairman of the Board, said (R. 156):

> "I never felt that there was any competition—that is, what you would call substantial competition. At most it was incidental, and it was so imperceptible that I would not know where to locate it."

The respective products of the two companies differed in selling quality. Mr. Stanley King, who, prior to the acquisition had been an officer of the McElwain Company, and subsequently went with the International Company, concerning the two makes of shoes said (R. 289-90):

> "The McElwain shoes in our opinion had a better finish and workmanship, more attractive and more modern lasts, from the point of view of the city trade, than the shoes of the International Shoe Company, and McElwain used substitutes for leather in its counters, heels and to some extent in its inner soles, as to which the International Shoe Company use no substitutes for leather. Our shoes had, in our opinion, a more attractive finish and appearance and more up to date lasts and patterns."

With reference to this difference Mr. Johnson said (R. 159):

> "My information, and that has come largely since our acquisition of the [McElwain] company, is that they made a line of goods that appealed largely to the city trade. Their construction and finish were of a nature that quite largely appeal to the city buyer, in that they gave a great deal more attention to finish than they did to wearing quality. Our company reversed that. We gave a great deal more attention to the wearing quality of our goods than we did to details

and finish, and that is the differentiation that I would make."

As to the effect of this difference on the sale of the shoes Mr. Johnson testified (R. 168):

> "I think they [i. e. International Company's shoes] were better [i. e. than the McElwain Company's] that is from the standpoint of service, but the unfortunate part of it is we could never convince the retailer who catered to city or dressy wear, we could not convince him of that fact,—the fact that our company travelled five hundred men and we were able to sell only three thousand pairs a day and that would be a maximum I think of our Patriot [i. e. men's dress] shoe."

The trade policies of the two companies differed essentially and in a way that confined the International Company to customers in small towns, while enabling the McElwain Company to meet the demands of the wholesalers and large retailers.

The McElwain Company, when requested so to do, stamped on the shoe the name or brand of the customer; the International Shoe Company refused to do this (R. 290; King).

Concerning the effect of this attitude Mr. Rand said (R. 469):

> "The large retailer in the large cities, who has his shoe store in the best retail streets of the city particularly, insists on advertising his own name, and not the name of the manufacturer. He would not buy shoes from a manufacturer under the manufacturer's name, because of the very sound reason that his overhead cost and expenses are larger and he is unwilling and unable to compete with the man in the outlying districts, with cheaper rent and cheaper property; and, whatever his costs may be, our experience with him has

been a positive refusal to buy our merchandise except under their own names; and we were equally positive in the refusal to put their own names on it, and we did not come together. We are just as far apart as the ocean."

The bulk of the International Company's business was in the south and the west (R. 161, Johnson), while that of the McElwain Company was north of the Ohio River and east of Illinois (R. 218, King).

The International Company sold over 95% of its product in farming communities; in towns having a population of 6,000 or less (R. 162, Johnson). The McElwain Company sold over 95% of its product to jobbers, wholesalers and dealers in towns having a population of 10,000 or more (R. 463, Rand).

During the calendar year preceding May, 1921, the International Company sold to 19 customers of the McElwain Company only 52 5/12 dozen pairs of dress shoes for men (R. 452, Rand).

(C) The Situation in 1921.

Up to 1920 the business of manufacturing shoes was generally prosperous. In the latter part of 1920, and early in 1921, it suffered a serious depression (R. 105, Rand; R. 153, Johnson; R. 290, King).

The experience of the two concerns was precisely opposite. The International Shoe Company adopted a policy of caution; purchased materials conservatively and anticipated the coming depression by slightly lowering its prices (R. 139, Rand). In the spring of 1921 it had orders greatly in excess of the capacity of its factories (R. 152, Johnson). There was not time to erect new factories to meet these orders (R. 40-1, Rand).

The McElwain Company, on the contrary early in 1920, had contracted for an abundant stock of hides and other materials at peak prices (R. 290-1, King). It could not afford to meet the decline which came about. In the summer of 1920 its orders were cancelled to the extent of $7,000,000 (R. 578).

In the early months of 1921 its factories, which had a rated capacity of about 38,000 pairs per day, were producing only about 6,000 or 7,000 pairs (R. 100, Rand). In the course of a year (from May, 1920) a balance sheet surplus of $3,888,440.00 was turned into a deficit of $4,382,136.00 (R. 203-4). It had discontinued the payment of dividends on its second preferred and common stock and was faced with the necessity of discontinuing dividends on the First Preferred shares (R. 579). It owed approximately $15,000,000 to some 67 banks (R. 291, King), and about $2,000,000 on open account (R. 613; Balance Sheet April 30th). Its paper was maturing (R. 349). Its fiscal year ended May 31 (R. 292-3) and the date for publishing its financial statement (required under the laws of Massachusetts) was approaching. Efforts to secure extensions or new capital had been exhausted, and after months of consideration the conclusion was reached by the officers and their financial advisers that the choice was between a liquidation receivership and a sale (R. 294, 350).

The changed situation is made clear by comparing conditions in 1920 and 1921 with respect to (a) production, (b) sales, and (c) working capital.

(a) The production (stated in pairs) during the first five calendar months was as follows (R. 674; Ex. No. 39):

1920	1921	Decrease	% Decrease
3,230,347	932,497	2,297,850	71%

(b) The volume of sales during the first five calendar months was as follows (R. 674; Ex. No. 40):

1920	1921	Decrease	% Decrease
$16,246,941	$3,794,522	$12,452,419	76%

(c) The progressive depletion of its working capital as shown by the balance sheets for May 30, 1920 (R. 655-6), February 28, 1921 (R. 645), April 30, 1921 (R. 613), May 31, 1921 (R. 656-7) and November 30, 1921 (R. 657-8), is here indicated:

	Current Assets	Current Liabilities	Working Capital
May 30, 1920	$26,191,649.45	$12,687,728.82	$13,503,920.63
Feb. 28, 1921	26,894,457.41	17,330,596.89	9,563,860.52
Apr. 30, 1921	21,448,783.64	17,177,349.25	4,271,434.39
May 31, 1921	19,403,715.88	15,880,901.42	3,522,814.46
Nov. 30, 1921	12,735,599.14	13,701,494.37	965,895.23

On May 31, 1920 (R. 655-6) the balance sheet shows a surplus of $3,888,440.73; on April 30, 1921 (R. 613), there is a deficit of $3,425,217.33—a loss in condition during 11 months of $7,313,658.06.

The balance sheet for April 30, 1921 (R. 613) shows current assets of $21,448,783.64, but of this amount $10,275,521.43 included the inventory value of shoes for which there was no sale (customers had cancelled orders to the extent of $7,000,000), customers' accounts represented $8,028,082.41 of its current assets, and it had cash on hand of $2,172,345.16. On April 30, 1921, the company owed in current accounts $1,958,349.25, and in unsecured notes held by 67 banks in New England $15,219,000—a total current indebtedness of $17,177,349.25 (R. 613).

The report of financial condition for 1921 contrasted with that of the year preceding, when filed in obed-

ience to the laws of Massachusetts, would have exhibited these changes:

	Excess of current assets over current liabilities (In round figures)
May 31, 1920	$13,500,000 (R. 655-6)
May 31, 1921	3,523,000 (R. 656-7)
Loss on operations for the year	$ 9,977,000
	Profit and Loss
May 31, 1920—Surplus	$3,888,440 (R. 655-6)
May 31, 1921—Deficit	4,382,136 (R. 656-7)
Loss in condition	$8,270,576

And even so Mr. King testified (R. 313) that the sale of the merchandise and the collection of the receivables disclosed that the condition of the company as of April 30th had been overstated "to the extent of several million dollars."

(D) Conferences Leading Up to the Transaction.

Under these circumstances, in the latter part of March, 1921, the International Shoe Company being without knowledge of the situation, Mr. McElwain, President of the McElwain Company, came to St. Louis without notice (R. 143, Johnson).

Mr. Rand was absent in Mexico. Mr. McElwain saw Mr. Johnson and left without accomplishing anything (R. 143-4).

Mr. McElwain and Mr. King again came to St. Louis about April 8th and submitted a written statement of the condition of the McElwain Company as of February 28th. Mr. Johnson declined to state any definite attitude of the International Company owing to the absence of Mr. Rand, the President (R. 144-5). Mr. McElwain asked when Mr. Rand returned if Mr.

Johnson and Mr. Rand would come to Boston. Mr. Rand returned about April 17th (R. 147). Accordingly late in April Mr. Johnson, Mr. Rand and Mr. Moulton, representing the International Shoe Company, went to Boston and had an interview with Mr. McElwain, Mr. King, representing the McElwain Company, and Mr. James J. Storrow, of Lee, Higginson & Company, representing the first preferred stockholders of the McElwain Company. This discussion extended over three days; it turned about the financial condition of the McElwain Company and resulted in nothing, for the reason that the representatives of the International Shoe Company refused to consider any proposition whatever without an inventory and an audit of the McElwain Company (R. 147-8, Johnson).

Mr. Johnson and Mr. Rand left for New York, where they were followed by Mr. King and had further discussion about the situation without result (R. 148-50, Johnson). Later, about May 8th, Mr. McElwain and Mr. King again came to St. Louis and at that time the agreement which is now under consideration was reached.

In the several conferences discussion was confined solely to assets on the basis of sound value (R. 78, Rand). When tentative agreement of their value was reached, it then became apparent that all the McElwain management and employees who held second preferred and common stock (R. 225, King) would be "broke", as nothing would be left out of the value of the assets to apply to such shares. In explaining to Mr. King why the International Company could not purchase the business on the basis of the inventory, Mr. Rand testified that he said (R. 82):

> "'The principal reason is, the showing is very much worse than we had anticipated, and the

statement shows, after proper deductions from assets, that the common stock is worth less than nothing, and if we secured that company we could not run it from St. Louis, and if we attempted to run it with the association of the men who have been running it, they would all be broke and hopeless, and they could not succeed, and we would not have the company on that basis, because the basis would be unworkable.' Mr. King was necessarily anxious and solicitous about something being done. We then adjourned to my bedroom and then tried to work out some basis for these assets that would express itself in the stock of the company and leave to the management of the company some returns for the efforts of a lifetime; and we did work out some figures on the issue of preferred stock by manipulating those figures so that the various prices for the three types of stock, in round figures, would amount to the same as the value of the company indicated by its inventory figures of April 30th."

(E) The Contract for the Acquisition of Stock.

Accordingly the International Company agreed to buy, and the McElwain Company's executives agreed to sell and cause to be delivered, all shares of all classes of stock for an aggregate sum equivalent to the agreed value of the assets (R. 84-5, Rand), paying 82½% of par for the first preferred, 75% for the second preferred, and 50% for the common. The agreement was executed May 11, 1921, and is set forth (R. 616, *et seq.*).

The avowed purpose was to satisfy all debts, to avoid the serious consequences of a general crash, to secure to the stockholding members of the McElwain organization enough to retain their active interest in reviving the failing concern, and for the International Company to have sufficient factories to meet its re-

quirements. The International Company had no organization in New England and was in no position to man this added enterprise from St. Louis. Concerning this circumstance Mr. Rand said (R. 50-1):

> "We would not have had those properties with all of the management and everyone gone, because we could not run it twelve hundred miles from St. Louis, with the personnel broken down, hopeless, and with new men—we did not have a surplus of men in our organization here in St. Louis to go down and direct the manufacture and distribution of 40,000 pairs of shoes additional. We needed help. We needed intelligent, loyal help; and that was the one reason why we positively declined, at any price, to buy for cash the physical assets of the company and disregard the entire organization."

The contract called for the delivery of *all* shares (R. 616). Thirty-five shares of First Preferred and fifty shares of Common failed to come in (R. 104), and this was what delayed the formal acquisition of the assets by the International Shoe Company (R. 103, 120). The rest came in promptly upon the representation by officers of the McElwain Company of the actual situation.

The contract of sale contained no restriction as to the right of any members of the McElwain Company to engage in the business of manufacturing shoes (R. 100), as a number of them have since done.

Lee, Higginson & Co., of Boston, who had placed the preferred stock with their customers, advised the sale as the best thing that could be done under the circumstances, in the following language:

> "We approve of the above agreement, and agree to use our best efforts to secure the accep-

tance of it by the holders of the first preferred stock of W. H. McElwain Company.

Lee, Higginson & Co." (R. 619.)

Mr. Rand, referring to what took place at the final conference before the contract of purchase was agreed upon, said (R. 83):

> "We discussed and discussed that [i. e., the financial condition of the McElwain Company], with Mr. King and Mr. McElwain and all of us were conscious of the fact that the company in this financial condition, with a liability on April 30th of $17,177,000, could not keep its doors open thirty days longer."

Mr. Johnson testified that at the conclusion of a conference in Boston in the latter part of April, he told the executives of the McElwain Company that they were "broke" (R. 148).

Mr. King described the situation in the following language (R. 300):

> "Mr. Storrow was unwilling to agree to the suggestions which had been tentatively agreed upon between the representatives of the International Shoe Company and the McElwain Company, on the ground that it did not adequately compensate the first preferred stockholders. I advised Mr. Storrow that it was essential that he agree, because in addition to the financial condition of the company, with which he was familiar, the management of the company was on the edge of a breakdown; Mr. McElwain had already broken down two days before. The first vice-president of the company had broken down two months before; the treasurer of the company had given up his major responsibilities eight months before, and the second vice-president of the company was on the edge of a breakdown and the company would disintegrate and the management

would disintegrate physically unless the situation was saved at once. Mr. Storrow then agreed. A contract was drawn and signed."

Mr. King further testified (R. 293-4):

"The financial condition of the McElwain Company at that time [to-wit, April 5, 1921] was practically insolvent, and in my opinion at that time, which I still hold, the company would have been actually insolvent upon the publication of those figures."

Ernest S. Gile, publisher of the Weekly Bulletin of Leather and Shoe News, testified (R. 363) that there was no criticism from a standpoint of injury either to the competitive shoe manufacturers, or to the supply houses and leather trade who sell the manufacturers. That the approval had been general, and that he had gone into that question thoroughly.

Mr. William A. Copeland, President of the General Shoe Machinery Company, testified as follows (R. 369):

"I understood about that time [i. e. about May 1921] that they were in financial difficulty, and that if they did not receive help that they would have to go into the hands of a receiver."

Asked (R. 376) whether his estimate as to the situation was not purely speculative, witness answered:

"If you asked what the effect would have been if the McElwain Company had gone into the hands of a receiver, I don't think there is such [much] speculation as to that effect."

Asked again (R. 377):

"I understood you to be basing your answer on what would have happened if the International Shoe Company had not acquired the stock of the W. H. McElwain Company."

To which the witness answered:

> "Almost synonymous, aren't they? Who else would have acquired it, if the International Shoe Company had not? The banks would have had to close them out, and you know what the effect of closing out of a large shoe industry, with all the factories centered within a few miles of each other, is."

The McElwain Company owed the First National Bank of Boston $1,000,000 (R. 352). Clifton H. Dwinnell, Vice-President of the bank and who for years had been in charge of leather and shoe credits, testified (R. 349) that he was familiar with the financial condition of the W. H. McElwain Company, and that it was very critical; that after discussions with representatives, he had told them that something had to be done right away or they would be in trouble.

In answer to Mr. McElwain's question whether it would be advisable for him to ask for extensions from his banks, witness told him that he might ask, but he could not answer as to that.

The advisability of getting more capital or selling out was discussed. As to capital, McElwain said it could not be done.

The suggestion of additional capital had been discussed with Lee, Higginson & Co., who had put out some of the securities of the McElwain Company. Witness further answered that the extension could be tried, but he felt it really was impossible, because there were so many banks involved, and that a receivership or sale was the only alternative.

As to the attitude of the Bank with respect to the $1,000,000 owing to it, Mr. Dwinnell said (R. 354):

"I can say this; that it was our intention to ask the McElwain Company to pay its loan; that had been gone over by our executive committee."

Asked what would have been the result of a receivership, he answered that he doubted whether stockholders would have had anything at all.

In answer to the question what would have been the result as to the communities its factories were located in, he answered (R. 351):

"Well, I think the—of course a lot of people would have been thrown out of employment; but what concerned me more was its effect on the other shoe industries in New England, as far as their credit was concerned."

Continuing:

"I think it would have caused a lot of distress to the other manufacturing concerns, because the failure of W. H. McElwain Company would have been almost the last straw; and in a time like the spring of 1921, probably banks, in a great many cases, would have called their shoe and leather notes."

Continuing:

"I think the shoe and leather and hides have been so closely allied, that it would have had a bad effect on the standing of those other kindred lines, as well as the shoe lines, from a credit standpoint."

Asked what was the result of the sale to the International Shoe Company, the answer was:

"I think it averted a catastrophe for New England; incidentally resulted in the payment of $15,000,000 or $16,000,000 worth of debts."

There is nothing in the testimony to indicate that the

E 1, Management & control of properties after stock acquisition by International Shoe Co.

International Shoe Company had in any manner influenced or helped to bring about the dilemma in which the McElwain Company found itself; or, indeed, had any information about the situation until they were called upon for assistance.

Upon the consummation of the sale in May, 1921, the International Shoe Company broadly advertised the transaction, particularly in the East. It at once sold some of the distributing branches of the McElwain Company to the managers of such branches; it tried to sell the others and after failing to do so, closed them to save further loss (R. 303, King). It reduced the prices of the shoes on hand and sold them as rapidly as possible (R. 173); it endeavored to collect accounts, but did so with heavy losses (R. 313); it operated all factories, giving work to all old employees and maintaining the full wage scale (R. 176).

Between May 11th and November 30th, the International Shoe Company advanced the McElwain Company $11,850,000 to pay its maturing debts (R. 197), which could not have been satisfied otherwise even measurably without a sale of the McElwain factories.

The International Shoe Company used the newly acquired factories to manufacture its own kind of shoes to meet its particular needs. It converted some of the factories to the production of shoes for women, and others into producing girls' shoes. The factories as a whole were used to make a general line of shoes rather than men's dress shoes only. However, it continued to produce such shoes according to its own specifications (R. 39).

With the factories so transformed, the International Shoe Company increased the output (R. 674; Ex. 39,

showing production in pairs monthly from 1920 to 1924).

Between the date of the acquisition (May 11th) and the end of 1921 the western branches of the International Shoe Company ordered from the McElwain factories 794,000 pairs. During 1922 the International Shoe Company took 58% of the total output, and during 1923 56% (R. 196).

Throughout the purchasing company treated the property of the selling company as part of its own system, although the paper organization of the McElwain Company was retained until some time in June, 1923, and records were kept separately of its financial condition.

On May 18, 1923, two years after the purchase, the facts having been public property during the intervening period, the Federal Trade Commission filed its complaint (R. 21).

In the meantime, several of the stockholders and officers of the McElwain Company had again engaged in the business of manufacturing shoes, and were, when the proofs were taken in June, 1924, pursuing that business (R. 304, *et seq.*). The International Shoe Company, however, having paid all the debts of the McElwain Company, having provided the necessary capital for operating the factories, having re-employed its entire force at regular wages, and having produced a larger output of shoes than had been done in the year preceding the acquistion, sustained a loss of more than $4,000,000. For all shares of all classes of McElwain stock (including 69,946 First Preferred Shares, R. 192) the International Shoe Company paid $9,460,000 (R. 193). Mr. Gray, auditor for the Company, testified that this was over twice the real value; that

when the entire net worth of the Company as of November 31, 1921, is allocated to the First Preferred shares, it gives a value of $57.01 per share (which is equivalent to about $4,000,000 for 69,946 shares) leaving no value to the second preferred and common stock (R. 206).

Immediately after the complaint was filed, the International Shoe Company divested itself of the paper title to the shares of stock in the McElwain Company and acquired the technical title to the assets (R. 49-50). The International Shoe Company, by the employment of the facilities of the McElwain Company, was enabled largely to fill its own orders. Since then the plants have been actively operated continuously, but with every financial support they have not been operated with profit.

(F) The Findings and Order of the Commission.

The Commission made an elaborate written report (R. 519-42) in which (a bare majority concurring) it found that (R. 522) "on and prior to May 11, 1921" * * * "the competition in commerce between the two companies was substantial"; that (R. 532) the effect of the acquisition was (a) to substantially lessen competition between the two concerns "in the sale of dress shoes for men"; (b) to restrain commerce in the sale of such shoes. The charge that the acquisition had a tendency to create in petitioner a monopoly in the shoe business was dropped and is out of the case. As to the defense based upon the insolvent condition of the McElwain Company, the Commission found that (R. 532-3) at the date of the stock acquisition the McElwain Company was not insolvent within the meaning of the National Bankruptcy Act.

By its order (R. 542), the effective date of which is May 7, 1927 (R. 559), the Commission called upon the petitioner to divest itself of the stock of the McElwain Company and to cease and desist from the ownership, operation and management of the properties formerly owned by the McElwain Company.

Commissioners Hunt and Humphrey dissented. Commissioner Humphrey filed a memorandum of dissent, concurred in by Commissioner Hunt, which is in part as follows (R. 544 et seq.):

> "In this case the evidence shows the following facts:
>
> 1. That the respondent acquired the stock of the McElwain Company.
>
> 2. That the respondent and the McElwain Company at the time were in competition. Whether such competition was material, is a matter of opinion.
>
> 3. That the McElwain Company initiated the transaction.
>
> 4. That at the time of the transaction the McElwain Company was in a failing financial condition, or at least its officers believed that it was, and they believed that its bankruptcy was probable.
>
> 5. That the respondent at the time had taken more orders than it was able to fill, at its then capacity, and was considerably troubled with these excess orders, and was very desirous, for this reason, of increasing production.
>
> 6. That it used the organization and assets acquired from the McElwain Company in increasing its output, largely for the purpose of filling these excess orders.
>
> 7. That the respondent did not increase prices; on the contrary, in some instances, it voluntarily decreased prices.
>
> 8. That it made better shoes, and sold them for the same or less money than the McElwain Com-

pany was selling the same class of shoes at the time the respondent acquired its stock.

9. That the respondent did not use the stock so acquired by voting or otherwise to bring about, or attempting to bring about, the substantial lessening of competition.

10. That the public was in no degree, in any way, injured by the transaction. On the contrary, the evidence shows that the public was benefited thereby.

QUESTIONS OF LAW.

"Admitting, but not asserting, that there was substantial competition between the respondent and the McElwain Company at the time of the transaction complained of, it was probable that this competition was going to be destroyed by the failure of the McElwain Company. This circumstance removed the very evil that the statute was intended to prevent. This being true, the transaction was not unlawful (*American Press Association v. United States*, 245 Fed. 91)."

* * * *

"Had the respondent been content to wait, if we are to be guided by the evidence, then in a short time its competitor would have been bankrupt. The stockholders would have lost their entire investments. A great organization would have been destroyed and the competition with which the respondent is charged with destroying would have been wiped out without cost to the respondent of a dollar.

"In this case, the commission has given warning to the business world that no one must answer the cry of distress. If they do, and save a vessel from complete wreck, no matter what the effect may be upon the public, they will be condemned and must suffer the penalty. But it will be perfectly proper and commendable to stand by until the vessel sinks, and its competition with them is thereby entirely destroyed, and then pick up whatever flot-

sam and jetsam they may, but under no circumstances must the vessel be saved, however much it may be to the public interest. I think such policy must inevitably injure the public and be immeasurably detrimental to our industries.

"I can not be oblivious to the fact that by the issuance of this order many innocent investors will be injured and that no one will be benefited."

In its efforts to show the Commission that its order could not be complied with, petitioner finally moved the Commission for leave to take further testimony (R. 26), and to have it modify its order. To that end petitioner alleged and offered to prove (R. 28) that the properties formerly belonging to the McElwain Company can not be sold for any reasonable price to a responsible purchaser who can and will continue the production of shoes; that without the capital, merchandise orders and trade supervision of the petitioner, investors can not be induced to embark capital in the business formerly conducted by the McElwain Company. The Commission ignored the motion and the offer of proof.

(G) The Decision of the Court of Appeals.

On March 3, 1928, petitioner filed its petition (R. 1) to have the order of the Commission reviewed and set aside. It specifically alleged the insufficiency of the complaint (R. 11), the undisputed proof of the insolvency of the McElwain Company (R. 13), and the positive proof that there was no substantial competition between the two concerns (R. 16).

Petitioner further filed a motion (R. 695) to have the Court of Appeals adjudge the complaint insufficient. The Court denied the motion without comment on the day it was argued (R. 715). The case was heard on the

merits October 4 and 5, 1928, and on November 27, 1928 (R. 715), the Court of Appeals affirmed the order of the Commission, holding that there was substantial competition between the two corporations, and that the McElwain Company was not insolvent (applying the bankruptcy definition of insolvency).

IV.

Specification of Errors

It is submitted that the Court below erred:

(1) In failing to sustain petitioner's motion to dismiss the proceeding because of the insufficiency of the Commission's complaint.

(2) In holding itself bound by the findings of the Federal Trade Commission as to the existence of substantial competition, which are based upon inferences and not upon the evidence.

(3) In sustaining the finding of the Federal Trade Commission that there was evidence of substantial competition between the two corporations at the date of the stock acquisition.

(4) In failing to hold that in contemplation of law the insolvency of the McElwain Company put an end to its ability to compete with anyone.

(5) In applying the Bankruptcy Act definition of insolvency as decisive of the McElwain Company's ability to continue in business and to engage in future competition, and in finding that it was in fact capable of continuing business.

In ignoring the insolvency definition of the Massachusetts law under which the status of the McElwain Company would have been fixed; and in ignoring the crippled financial and commercial condition of the Company as conclusive of the question at issue.

(6) In failing to hold that Section 7 of the Clayton Act has no application to an acquisition of share capital where that step offers the selling company the only escape from liquidation, and the buying company is endeavoring to increase its facilities for output.

(7) In disregarding throughout the undisputed and decisive facts that the purchase of the share capital was not had, and the share stock was not used, to lessen competition, but that the object, intent and purpose of both seller and purchaser was to save a large factory for the protection of creditors and stockholders and the trade.

(8) In disregarding the controlling decisions of this Court and the Circuit Court of Appeals construing the Clayton Act.

V.

Summary of Argument.

(1) The complaint is insufficient. If, for its vague conclusions, a statement of facts that induced the transaction is substituted, it is obvious that there was no grievance to be corrected.

(2) The Circuit Court of Appeals affirmed the order of the Federal Trade Commission on the erroneous theory that its findings, even though drawn from the inferences and not evidence, were binding on the Court, and that it could not, after an examination of the evidence, determine that it did not support such findings or justify the order of the Commission.

(3) There is no evidence of substantial competition at the time of the transaction; hence no basis for the order.

(4) The decision of the Court of Appeals in this

case is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit, affirmed by this Court, construing and applying Section 7.

(5) The evidence is conclusive that the financial condition of the McElwain Company at the time of the transaction was such that it had to sell or liquidate; hence its activities as a shoe manufacturer were ended.

(6) The condemnation of plaintiff in error is grounded upon the Bankruptcy definition of insolvency. That test is irrelevant to the proceeding. The true test is the actual financial condition of the seller.

(7) Section 7 of the Clayton Act has no application to the acquisition by one corporation of the stock of an insolvent corporation, where on the part of the seller the transaction is the only escape from liquidation.

(8) The complaint was purely technical at its inception. Immediately after the complaint was filed plaintiff in error divested itself of the shares. Even the technical complaint was thereby met. While the stock of the McElwain Company was held by plaintiff in error, it was in no sense used to control, lessen, or in any fashion affect, competition in trade; and today no order of the Commission can be made effective beyond what has already been done, because there is no sale for the assets which the plaintiff in error has acquired.

VI.

ARGUMENT.

(1) The Complaint Is Insufficient.

The requisites of a complaint by the Commission when proceeding under authority of the Clayton Act

are the same as when it proceeds under the Federal Trade Commission Act. Paragraph 2 of Section 11 of the Clayton Act (prescribing the essentials of a complaint) is a rescript of Paragraph 3 of Section 5 of the Federal Trade Commission Act. In *Federal Trade Commission v. Gratz,* 253 U. S. 421, which was a proceeding under the Federal Trade Commission Act charging "unfair competition", this Court held the complaint insufficient and declined to review the evidence on which the Commission and the Court of Appeals had acted. The court said (page 427):

> "If, when liberally construed, the complaint is plainly insufficient to show unfair competition within the proper meaning of these words, there is no foundation for an order to desist,—the thing which may be prohibited is the method of competition specified in the complaint. Such an order should follow the complaint; otherwise it is improvident, and, when challenged, will be annulled by the court."

Section 7 prohibits stock acquisitions only *"where* the effect * * * may be to substantially lessen competion", etc. The conjunction "where" requires an allegation of facts constitutive of the forbidden "effect". Waiving technical niceties of pleading and granting that the complaint is to be liberally construed, yet the irreducible minimum is an allegation of facts showing (a) the existence of competition—not "in the shoe business", but—in the sale of a specified class of shoes; and (b) that such competition was substantially lessened—not by reason of some circumstance with which petitioner was in no wise connected, viz., the financial breakdown of the seller, but—as the effect of the stock acquisition by petitioner. Here the complaint is lacking in both respects.

As to the petitioner the complaint alleges (R. 21):

> "The respondent owns and operates thirty-two or more shoe factories in the States of Illinois, Missouri and Kentucky, some of which have been acquired by absorbing competing companies. The respondent also owns and operates stores, selling departments and branch establishments among the several States and the District of Columbia and is and has been engaged in the business of manufacturing shoes for *men, women, boys, children* and *infants,* and in selling *such shoes* to wholesale and retail shoe dealers and other purchasers in the various States of the United States in addition to those States in which its said factories are located."

As to the McElwain Company the complaint alleges (R. 22):

> "It owns and operates shoe manufacturing plants in the State of New Hampshire where shoes for *men* and *boys* have been made and are manufactured and owns and operates stores, selling departments and branch establishments in the cities of Boston, Massachusetts; New York City, New York; Columbus, Ohio; Chicago, Illinois; Kansas City, Missouri; San Francisco, California, and in other places within the several states of the United States and the District of Columbia. It was and is engaged in the business of selling *such shoes* to wholesalers, retailers and others among the several States of the United States, the territories thereof", etc.

As to the existence of competition between the two corporations the complaint alleges (R. 22-3):

> "On and prior to May 11, 1921, the respondent and the said W. H. McElwain Company were in competition with each other *in the shoe business as hereinabove described*".

The complaint does not charge what was the approximate volume of business done periodically by either concern; what quantity, quality or variety of shoes, or at what range of prices, were sold by either; with respect to what kind of shoes there was competition, under what circumstances petitioner acquired the stock; what was the object, purpose and intent of either purchaser or seller; in what respect or degree, and as to what class of shoes, the stock acquisition restrained commerce; in what manner and to what extent the stock acquisition had a tendency to create an unlawful monopoly in petitioner.

(2) The Court of Appeals erred in holding itself bound by the unsupported findings of the Federal Trade Commission.

The Court of Appeals, in holding its jurisdiction did not permit it to go behind the findings of the Commission based on inferences (contradicted by evidence and not justified thereby), has overlooked its province and duty as stated by this Court in *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S., at page 580, where it says:

> "Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive. But, as the statute grants jurisdiction to make and enter, upon the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented, and whether there are material facts not reported by the commission. If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be, remanded to the commission,—

the primary fact-finding body,—with direction to make additional findings; but if, from all the circumstances, it clearly appears that, in the interest of justice, the controversy should be decided without further delay, the court has full power under the statutes so to do. The language of the statute is broad, and confers power of review not found in the Interstate Commerce Act."

(3) There Was No Substantial Competition.

The Federal Trade Commission's conclusion, that the sale of shares had the effect to lessen competition between the two corporations, is not supported by the testimony.

As to the alleged competition the Commission's Finding (Par. 5, R. 522), which is quoted and approved by the Court of Appeals without any analysis of the testimony, is an inference which is wholly unwarranted by the undisputed facts.

The finding is that the petitioner sold men's dress shoes *"similar in style,* comparable in price and *equal or superior in quality* to the men's high and low dress shoes produced by the McElwain Company." And "Both companies made and sold *medium priced dress shoes* and sold such shoes to retail dealers *in the same States, and in many of the same cities* and towns, and *in some instances to the same dealers."* All these generalities are consistent with the absence of substantial competition and altogether insufficient to show it. The only witnesses who were examined as to competition testified positively and without contradiction that there was no substantial competition.

The record shows that by "similar in style" is meant that both concerns made high shoes and low cuts (R. 340). With respect to quality Mr. Johnson testified, as

we have shown, that the International Company's shoes were not acceptable to buyers and wearers in the larger centers of population.

Substantial competition is a fact, susceptible of direct proof;—it does not rest on inferences. The fact that two manufacturers make men's dress shoes, one as its sole product, the other a small part of its output; —where the shoes are differently constructed and sold to different classes of customers, largely in different classes of towns, does not prove competition, even though during a year nineteen merchants in the United States purchase small quantities of shoes from both manufacturers.

Both the Commission and the Court of Appeals ignore this absence of testimony and these facts which are undisputed.

The Clayton Act names specific grounds of complaint, but its general purpose is that of the original anti-trust statute.

The title of the Clayton Act is "An Act to Supplement *Existing Laws* Against Unlawful Restraints and Monopolies and for other Purposes." The enacting clause provides that the words "anti-trust laws" include the Sherman Act. The statute, therefore, is an amendment of the Sherman Anti-trust Act and should be construed and given effect to as such.

In *United States v. Freeman* (1845), 3 How. 556, 564, this Court said:

> "The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts *in pari materia* are to be taken together, as if they were one law."

Applying this rule of construction, the Court of Appeals for the Third Circuit, in *Standard Oil Company v. Federal Trade Commission* (1922), 282 Fed. 81, 87, said:

> "Though differing somewhat from other laws, as we have indicated, the Clayton Act, nevertheless, deals with matters within the realm of monopoly. Therefore in determining whether given acts amount to unfair methods of competition within the meaning of the Federal Trade Commission Act, or substantially lessen competition and tend to create a monopoly within the meaning of the Clayton Act, the only standard of legality with which we are acquainted is the standard established by the Sherman Act in the words 'restraint of trade or commerce' and 'monopolize or attempt to monopolize' and by the courts in construing the Sherman Act with reference to acts 'which operate to the prejudice of the public interest by unduly restricting competition or unduly obstructing the due course of trade' and 'restrict the common liberty to engage therein.' *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.*, 224 Fed. 566, 573; affirmed 227 Fed. 46; *United States v. American Tobacco Co.*, 221 U. S. 106, 179; *United States v. Patten*, 226 U. S. 525, 541; *Eastern States Lumber Asso. v. United States*, 234 U. S. 600, 613, 614; *Standard Oil Case*, 221 U. S. 1; *Standard Fashion Co. v. Magrane-Houston Company*" (258 U. S. 346).

And in affirming the decision of the Court of Appeals (*Federal Trade Commission v. Standard Oil Company*, 261 U. S. 463), this Court said, at page 476:

> "The great purpose of both statutes [i. e. the Federal Trade Commission Act and the Clayton Act] was to advance the public interest by securing fair opportunity for the play of the con-

> tending forces ordinarily engendered by an honest desire for gain."

This is likewise the "great purpose" of the Sherman law.

Both enactments are an exercise of the power of Congress to regulate interstate commerce. In construing the Sherman Act this Court has held that the extent and also the limitations of the prohibitions are measured by consideration of the public interest in interstate and foreign commerce.

Thus in *United States v. American Tobacco Co.*, 221 U. S. 106, 181, the Court, referring to the Standard Oil Case and declaring the extent of the prohibitions, said, "it was pointed out that the generic designation of the 1st and 2d sections of the [Sherman] law, when taken together, embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed".

In the same case, in declaring the limitation of the prohibitions, the Court said (pages 179-180):

> "the words 'restraint of trade' should be given a meaning which would not destroy the individual right to contract, and render difficult, if not impossible, any movement of trade in the channels of interstate commerce,—the free movement of which it was the purpose of the statute to protect".

Earlier in the opinion (page 179), and referring to the opinion in the Standard Oil Case, the court said:

> "It was therefore pointed out that the statute [i. e. Sherman Act] did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods,

whether by agreement or otherwise, to accomplish such purpose".

In *Nash v. United States*, 229 U. S. 373, 376, the Court re-iterated the limitations of the prohibitions of the Sherman Act. In summarizing the effect of the Standard Oil and American Tobacco Company cases, it said:

> "Those cases may be taken to have established that only such contracts and combinations are within the [Sherman Anti-Trust] act, as by reason of intent or the inherent nature of the contemplated acts prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In determining whether a given contract or act comes within the scope of the prohibitions, the paramount and decisive consideration is protection of the public interest in relation to interstate and foreign trade. If such contracts or acquisitions have the effect of unduly restricting the course of interstate trade, they are unlawful regardless of the form of the transactions. But if such contracts or acquisitions do not prejudice the public interest in interstate commerce, they do not come within the prohibitions of the Sherman Act regardless of the form of the transaction.

The same limitation must obtain with reference to the specific prohibitions of Section 7 of the Clayton Act, otherwise by that section Congress has prohibited such transactions without regard to the public interest committed to it under the Constitution, that is regardless of the beneficial or harmful effect of such transactions on the course of interstate trade. Such a construction of the Clayton Act, a supplement to

the Sherman Act, would be in direct conflict with the established construction of the Sherman Act, in that under the Sherman Act protection to the public interest marks both the extent and limitation of the power exerted, while under Section 7 of the Clayton Act such public interest would not measure either the extent or limitation of the power exerted. The reason and necessity for limiting the generic prohibitions of the Sherman Act obtain with respect to the specific prohibitions of the Clayton Act. The requirement that the acquisition of shares, and the manner in which the authority so gained is employed, shall have the effect to substantially lessen competition, is directed to the protection of the public interest, just as the provisions of the Sherman Anti-trust Act are. Not a technical, but an actual injury is necessary. The Clayton Act does not impose a penalty upon the person, but makes provision for the substantial protection of the public.

The competition, however, between these two corporations was so remote and so infinitesimal that the effect of its discontinuance upon the public would be purely speculative. Only four percent of the output of the International Shoe Company came in competition with the McElwain Company's product even remotely.

Throughout the quality of materials, the kind of shoes, the method of distribution, the size of towns and the general territory covered, differed essentially. There was no phase of competition between these two companies that was not as completely, if not more effectively, covered by other manufacturers among the fifteen hundred who were then active in business. For these reasons the transaction did not lessen competition.

(4) The decision of the Circuit Court of Appeals in this case is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the case of *Federal Trade Commission v. Thatcher Manufacturing Company,* which Court, in 5 Fed. (2nd) at page 622, paragraphs 6, 7, said:

> "Not every acquisition by one corporation of the stock of a competing corporation is forbidden by Section 7 of the Clayton Act. The act, by express terms, says that Section 7 does not apply to a corporation 'purchasing such stock * * * and not using the same to bring about, or in attempting to bring about, the substantial lessening of competition'. Testing the transaction (as it affected the Woodbury Company) by the whole of Section 7, the evidence discloses that before the respondent acquired the stock of the Woodbury Company that corporation was engaged chiefly in the manufacture of condiment and whisky bottles, and that its manufacture of milk bottles was very small, amounting annually to about 8,000 gross out of a total production in the United States of over one million gross. The evidence also shows that it was gradually getting out of the milk-bottle business and that, indeed, before the transaction in question arose, it had determined to do so. When its stock was acquired the respondent took over its outstanding contracts, one or two in number, and filled them. The respondent's real object in acquiring the Woodbury stock, as we see it, was to acquire its patent license, that being a nonexclusive license to use the Hartford-Fairmont feeders in the manufacture of condiment bottles, fruit juice bottles, fruit containers, fruit jars and glassware for carbonated soft drinks, branches of the glassware business in which the respondent was not engaged, and, therefore, in which it was not a competitor. While the effect of the transaction upon the Woodbury Company was to stop its manufacture of milk

bottles and, accordingly, to end its competition in milk-bottle manufacture, the number of milk bottles the Woodbury Company made was so inconsiderable that the lessening of competition thereby was not substantial. We are, therefore, of opinion that the evidence does not sustain the Commission's finding that the respondent's acquisition of the stock of the Woodbury Glass Company substantially lessened competition between the corporations, restrained commerce and tended to create a monopoly. That part of the Commission's order is, therefore, not approved and will not be enforced."

With reference to that holding this Court in *Thatcher Manufacturing Company v. Federal Trade Commission*, 272 U. S. 554, at 560, said:

> "The court below held that the last named company (i. e. Woodbury Glass Company) was not in competition with petitioner within the meaning of the statute and modified the order accordingly. Therein we agree and to that extent affirm its decree."

The Court of Appeals in the case at bar says that the Sherman Act and the Clayton Act provide different tests of liability (*United Shoe Machinery Co. v. United States*, 258 U. S. 451, 459). While this is true, the Clayton Act does not change the meaning of the terms "substantial competition", "restraint of trade" and "monopoly".

Further, the existence of substantial competition is a necessary condition of liability under each statute, and the absence of such competition here, and the insolvency of the McElwain Company, render both enactments inapplicable. On this ground we submit the decision of the Court of Appeals is in conflict with the principles laid down in cases under the Sherman Act.

In the case of *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, the Court said, at 356-7:

> "Section 3 condemns sales or agreements where the effect of such sale or contract of sale 'may' be to substantially lessen competition or tend to create monopoly. It thus deals with consequences to follow the making of the restrictive covenant limiting the right of the purchaser to deal in the goods of the seller only. But we do not think that the purpose in using the word 'may' was to prohibit the mere possibility of the consequences described. It was intended to prevent such agreements as would under the circumstances disclosed probably lessen competition or create an actual tendency to monopoly. That it was not intended to reach every remote lessening of competition is shown in the requirement that such lessening must be substantial."

The cases of *Federal Trade Commission v. Western Meat Co.*, (272 U. S. 554), and the case of *Aluminum Company v. Federal Trade Commission* (284 Fed. 401) are not in conflict with these decisions, because in the first case the existence of substantial competition by a going concern was undisputed, and while in the Aluminum case the selling company appeared to be in failing condition, the fact is clear that this company was the sole competitor in the field, and that its embarrassment was in large measure attributed to a contract which enabled the Aluminum Company to exert pressure upon it.

(5) But apart from the relation of the state of competition between the two corporations in the past, all chance for competition, present or prospective, was eliminated by the financial dilemma in which the McElwain Company found itself early in 1921. This con-

dition appears from its financial statements, which show a large stock at peak prices, cancellation of orders, curtailment of production by 75%, and a change from a surplus to a substantial deficit in the course of six months, with an indebtedness to 67 banks of 15 million dollars, with no prospect of an extension and with a failure of every effort to secure additional capital.

This evidence is confirmed by the demoralization of practically the entire executive body of the corporation as described by Stanley King. The decision reached by the management reluctantly after months of consideration, is endorsed by bankers and creditors who were vitally interested in the particular and in the general trade conditions, and, above all, by Lee, Higginson & Co., who were the backers of preferred stock, and who were concerned not only in its monetary value, but also in the integrity and wisdom of putting out the preferred stock of this concern.

To hold that the McElwain Company was obliged under these circumstances to continue its business, and to risk the fate of its capital and its creditors upon so doubtful an enterprise, would mean a sacrifice of private property to public policy. The statute undertakes to regulate going concerns; not to determine how the wreckage of a failing concern shall be employed. If a reorganization had been had, or if a receiver had been named, as has been suggested in this case by the Court of Appeals, neither investors nor the Court would have been concerned with the question of how the product of the factories should be sold. If the Court had ordered a sale by receivers or bankruptcy proceedings, the decree would not have contained a provision that the property purchased at such a sale should thereafter pursue its former competitive lines.

When, therefore, the probability of a receivership was apparent, it became the obvious duty of the directors to anticipate that danger and to exercise their best judgement for the preservation of the assets to protect the creditors and stockholders.

There is no question here of good faith. It is admitted that throughout the negotiations the motives of both parties were of the best. Neither is there challenge by a single witness of the soundness of the judgment in making the sale. The officers and directors of the McElwain Company were men of large experience. They had piloted the concern through many years, in good times and bad. Bankers, creditors and independent observers were of one mind, that the sale was necessary, and that the escape from a receivership avoided a general crash and gave protection to creditors and stockholders that no other step could have secured.

The Commission does not attempt to suggest how the Company could have continued its business, but the Court of Appeals says there were "several alternatives", of which three are stated:

> "(a) The McElwain Company's bank creditors might have carried the concern, just as at that time the banks were carrying a very large percentage of the business concerns in this community. It was a period of 'frozen credits,' a time when there was practically a conceded moratorium to a large share of our business concerns, which competed fiercely for rehabilitating trade.
>
> (b) If a receivership had been found a necessary expedient, competition under receivership management would have been likely to be intensified, not eliminated.
>
> (c) In case of actual bankruptcy, the holders of the preferred stock (one or both classes) would in their own interest have taken over the property,

kept it in active operation and therefore in competition."

Each alternative stated by the Court presupposes the inability of the Company to pay its debts as they became due; and the tenability of each alternative is tested by the facts shown of record.

As to (a) the First National Bank of Boston, holding the Company's notes in the amount of $1,000,000, was unwilling to renew or extend them. While the representatives of the other banks did not testify, no doubt the banks were in accord on the matter, for in President McElwain's letter to the shareholders, recommending the sale (R. 579), he said: "While our banks have not yet restricted our credits, we realize that it is not the function of the banks to supply permanent working capital and that the duty and the necessity has rested upon us to reduce our bank loans as rapidly as possible until they come within the compass of our reduced resources." That the banks exacted payment shortly is indicated by the fact that between May 11 and May 31, 1921, the International Shoe Company had to advance $900,000; in the month of June $4,400,000 additional, and that by November 30, 1921, it had advanced over $11,000,000 to meet the debts of the McElwain Company (R. 108).

As to (b), it is not suggested how "receivership management" could have "intensified" competition. In order to compete, the shoes must be produced and sold at a profit, otherwise losses mount still higher.

To the McElwain officials, who were capable, experienced and deeply interested, the situation "held out no practical opportunity to operate our factories or to conduct our business on a sufficient scale to afford a

reasonable expectation of profit" (R. 579; letter to stockholders quoted above).

As to (c), the record shows that throughout the negotiations the First Preferred stockholders were represented by Mr. James J. Storrow of Lee, Higginson & Co. (R. 300). The contract of sale was, as we have shown, expressly approved by that firm.

The second preferred shares were mostly held by the directors who signed the contract and by the employees of the Company (R. 225).

All the alternatives imagined by the Court of Appeals, and perhaps others, are envisaged in the letter to the stockholders (R. 579) quoted above: "In these circumstances your officers and directors have studied various plans of securing additional capital, all of which have been carefully weighed and analyzed with Messrs. Lee, Higginson & Co., and in conference with our banks."

And all three alternatives can be measured by the actual experience of the business as conducted by the petitioner. It "carried" the McElwain Company, it paid the indebtedness; it took over the property and "kept it in active operation", with the result that from May 31, 1921, (R. 656-7) to November 30, 1921 (R. 657-8) the operating capital of $3,522,418.46 completely disappeared from the balance sheet and the deficit of $4,382,136.70 was increased to the sum of $9,103,076.59.

The experience of the International Shoe Company shows that the McElwain Company's business when operated could not pay its debts, and that the only salvation for all parties in interest was a sale. Since the Federal Trade Commission made its order, repeated efforts to find a purchaser for the property even at a substantial loss, have failed.

(6) It was Error to Test the ability of the McElwain Company to Continue business by the Federal Bankruptcy Definition of Insolvency.

In its Findings (Paragraph 24; R. 532-3) the Commission takes the book value of all the assets (including real estate and plants at approximately $5,000,000) shown on the balance sheets and deducts therefrom the current indebtedness shown, and concludes that "the property of the W. H. McElwain Company * * * "exceeded its debts by" the amount of the remainder. Summarizing the computations thus made the Finding concludes with this:

> "At and prior to the acquisition by respondent (i. e. petitioner here) of the stock or share capital of the W. H. McElwain Company the aggregate of the property of W. H. McElwain Company, at a fair valuation, was more than sufficient in amount to pay its debts. W. H. McElwain was not insolvent prior to the acquisition of its stock or share capital by the respondent, nor subsequent thereto."

Affirming this, the Court of Appeals says: "The Commission expressly found that the McElwain Company was not insolvent within the Bankruptcy Act definition. Plainly it was not".

Both tribunals make this negative finding decisive. Neither tribunal considers the stockholders or the saving of any part of their investment. Both tribunals rest their decision upon the assumption that the debts might be paid. Moreover, the Company's business activity was circumscribed by the law of Massachusetts and by that law the Company's liability to pay its debts as they became due subjected it to involuntary liquidation proceedings for the benefit of creditors,

whether it was insolvent within the meaning of the Bankruptcy Act or not.

For several decades the courts of Massachusetts have held that a trader is insolvent who either has ceased to pay his debts in the ordinary course or cannot pay his debts as they become due. *Thompson v. Thompson* (1849), 4 Cush. 127, 134; *Lee v. Kilburn* (1854), 3 Gray, 594, 600; *Vennard v. McConnell* (1866), 11 Allen, 555, 561; *Peabody v. Knapp* (1891), 153 Mass. 242, 244; *Holbrook v. International Trust Co.* (1915), 220 Mass, 150, 155; *Steele v. Commissioner of Banks* (1922), 240 Mass. 394, 397. And this definition was enacted as a part of the law of sales of personal property. The statutory definition is as follows (General Laws 1921, Chap. 106, Sec. 65 (3)): "A person is insolvent who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not."

This Court has held that the two definitions of insolvency viz. of the Bankruptcy Act and that by the law of Massachusetts, import different meanings and that each obtains within the realm of the authority enacting it. *United States v. Oklahoma*, 261 U. S. 253, 261.

Neither the Court of Appeals nor the Commission mentions the law of Massachusetts; neither denied the inability of the Company to pay its debts as they became due, neither tribunal explains how the Company's debts could have been paid without the sale of its factories and the discontinuance of the business.

But it is submitted that the true test was solely one of commercial and financial capacity to survive the

embarrassments which confronted the corporation and its management. If the company was doomed in the deliberate and well grounded judgment of its officers and stockholders, then the inhibitions against a sale must cease to operate. The public interest and the avowed purpose of the law could not longer be served by a decision to persist in a hopeless enterprise.

The case of the *American Press Association v. United States,* 245 Fed. 91, was decided by the Court of Appeals for the Seventh Circuit. The situation was this. In 1912 the Government brought suit against the American Press Association, the Western Newspaper Union and others under the Sherman Anti-Trust Act and obtained a decree by which the Western Newspaper Union was permanently enjoined from combining with the American Press Association "either by purchase, stock ownership or in any other manner".

But the circumstances greatly changed. In 1917 the American Press Association was conducting its business at a loss of over $3000 per month and was practically bankrupt. It petitioned the District Court for permission to sell the property as a going concern to the Western Newspaper Union. The District Court denied the petition. The Court of Appeals reversed the decision of the District Court and in the course of its opinion said (page 93):

> "The American Company is forced to go out of the plate business. No decree can stop that. And after the American Company quits, if the Western is left alone in the field, the ultimate situation of the country newspapers would be the same whether the plant be scrapped or sold as an integer. Neither the decree, nor in our judgment, the Sherman Law prevents the Western from buying the scraps piecemeal. If it did buy, it could organize

them anew. If it be permitted to buy the integer, it would save the expense of reorganization. If the plant be scrapped two injuries result; one to the public from the destruction of a usable and useful plant; the other to the stockholders of the American Company."

In the case of *United States v. United States Steel Corporation*, 251 U. S. 417, the Court had before it as one phase the purchase by the defendant of the Tennessee Coal and Iron Company. Concerning this acquisition the Court said (pages 446-7):

"There is, however, an important circumstance in connection with that (i. e. acquisition) of the Tennessee Company which is worthy to be noted. It was submitted to President Roosevelt and he gave it his approval. His approval, of course, did not make it legal, but it gives assurance of its legality, and we know from his earnestness in the public welfare he would have approved of nothing that had even a tendency to its detriment. And he testified he was not deceived and that he believed that 'the Tennessee Coal and Iron people had a property which was almost worthless in their hands, nearly worthless to them, nearly worthless to the communities in which it was situated, and entirely worthless to any financial institution that had the securities the minute that any panic came, and that the only way to give value to it was to put it in the hands of people whose possession of it would be a guaranty that there was value to it'. Such being the emergency, it seems like an extreme accusation to say that the corporation which relieved it, and, perhaps, rescued the company and the communities dependent upon it from disaster, was urged by unworthy motives. Did illegality attach afterwards and how? And what was the corporation to do with the property? Let it decay in desuetude, or develop its capabilities and resources? In the development, of course, there would be profit to the corpora-

tion, but there would be profit as well as to the world. For this reason President Roosevelt sanctioned the purchase and *it would seem a distempered view of purchase and result to regard them as violations of law.*" (Italics ours.)

(7) The evidence in this case makes it clear that the essential purpose which the Clayton Act denounces was absent from the transaction in question. True, the purchase was had by the acquisition of the stock, but that stock was not held, used or voted for the purpose of lessening competition; nor did the ownership of the stock even remotely have such an effect. The aim of the transaction was to save a business that was going on the rocks in the opinion of managers who had been in charge of it for many years. The ownership of the stock was purely formal. The consummation of the purchase of assets was deferred; not because the authority and power of these shares was to be used to influence competition, but because the agreement of the McElwain Company to bring in all shares had not been carried out. The International Shoe Company, wishing to avoid all controversy with a few stockholders who had not come in, postponed the dissolution of the McElwain Company; but in the meantime the control of the assets and the amalgamation of the two properties had in all respects taken place. The effect upon trade was as completely determined as if the assets had been technically transferred before the complaint was filed.

(8) From first to last there is nothing in the procedure and in the consequences of the transaction that invites the denunciation of the law. We submit if this were a proceeding under the Sherman Act, there is no step in the dealings between the parties that would be challenged by any provision of that act as construed by this Court.

The sole question turns upon the particular provision of Section 7 of the Clayton Act. Broadly speaking, there may be a vague competition between all the 1500 concerns engaged in making shoes. To guard against so attenuated a test, the statute requires that only a substantial lessening of competition shall be ground of complaint. We submit that essential competition cannot be based upon the circumstance that at some remote points the trade of the two concerns came in contact, involving nothing more than a negligible number of pairs of shoes. Furthermore, the condition of the McElwain Company was such as to preclude the possibility of any competition then or thereafter.

In all respects the transaction itself was fair, open, without the suggestion of oppression or sinister purpose. So much is admitted by counsel for the Commission (R. 126).

Apart from the question of competition, a transaction otherwise not subject to challenge is attacked solely because the assets were acquired by a purchase of shares. The decisions of this Court make it clear that the mere *purchase of shares does not constitute an offense.*

This Court has said that where the purchase of shares has been followed by the acquisition of title to the assets before the Commission moves, there is no ground for complaint under the Clayton Act, regardless of the question of competition. *Thatcher Manufacturing Co. v. Federal Trade Commission,* 272 U. S. 554. As a means of approach to securing title to assets, the purchase of shares is not improper. In this case, it is true, technically the title to assets was not obtained until after the complaint was filed; and, strictly speaking, such a case has not been passed upon by this Court. But it is also true that in this case the as-

sets of the McElwain Company had been absorbed and, to all intents and purposes, used by petitioner as owner. The two properties were amalgamated and openly used as one for two years before the complaint was filed. Holders of 50 shares of preferred, and 35 shares of common, stock held out, and the formality of passing technical title and the admitted purpose to dissolve the corporation had been delayed. So soon as complaint was made, the technical omission was corrected. The one evil complained of was cured; in the only way in which this could at that stage be done.

Much is made in the record of the manner in which the sale of the stock by the International Shoe Company and the acquisition of assets was effected. We respectfully submit if there was no substantial competition past or prospective this discussion serves no practical purpose. If the company had the right to sell the shares and to acquire the assets, the method adopted does not touch the merits of the transaction.

Should this Court hold that the technical transfer came too late to defeat the complaint, there is still the question of the relief to be ordered. The Commission's order, effective May 7, 1927, (six years after the transaction) calls upon petitioner "to divest itself of the stock of the McElwain Company, and to cease and desist from the ownership, operation and management of the properties formerly owned by the McElwain Company", and this without regard to the $11,000,000 which the International Company advanced to enable the McElwain Company to pay its debts.

It is respectfully submitted that this order is incapable of performance. There are no shares of stock within its control, and there are no takers, if the stock could be offered. So much is obvious. Petitioner would be the only purchaser. The order to desist from the own-

ership and management of the properties cannot be carried out. If petitioner is now the owner (and this the order presupposes), then the general purpose and the technical requirements of the law have been met. If the order contemplates (what it does not say) a resale of the properties, then it can accomplish nothing of practical value, for the obvious reason that they would have to be offered subject to the debts which petitioner now controls. A reinstatement of the situation, it is submitted, embraces debts as well as properties. It stands to reason that purchasers who desisted in the beginning would be more reluctant now to assume such obligations. The financial embarrassment of the concern must deter any outside investor from engaging in it. Only a going concern in immediate and peculiar need of the facilities offered, and prepared to pay correspondingly for them what no one else could be induced to give, would consider the proposition. This is the sole explanation for the prompt purchase by petitioner at a price that advantageously salvaged the properties for all concerned, instead of waiting to take them at ruinous figures after the inevitable crash. It has not been possible to secure any offers for the assets and it must be apparent that at any sale the petitioner would be the only bidder. The result would be that the title which it now holds would be confirmed.

Respectfully submitted,

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September, 1929.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 42

INTERNATIONAL SHOE COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

REPLY BRIEF OF THE INTERNATIONAL SHOE COMPANY TO THE BRIEF OF THE FEDERAL TRADE COMMISSION, FILED NOVEMBER 26, 1929.

CHARLES NAGEL,
FRANK Y. GLADNEY,
R. E. BLAKE,
JAMES D. WILLIAMSON,
Counsel for International Shoe Company.

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In Explanation of the Surplus and Deficit Figures Shown in the Printed Record.

Petitioner desires to call the attention of the Court to the record as printed in this case. In the balance-sheets, which were adduced in evidence in the trial of the case, deficits were shown by figures in red. In the printing of the record this was abandoned and the figures were printed in black and, in order that the

Court may not confuse surplus and deficit figures, we will call the Court's attention thereto.

On page 646 of the record appears the report of the treasurer to the board of directors, covering nine months' operations, from May 30, 1920, to February 28, 1921. This shows operating losses for the period of $1,958,305.48. The figures should be in red. This report shows an undivided surplus May 30, 1920, of $3,888,440.73, and the surplus remaining after these losses and the payment of dividends of $644,090.75 was $1,286.044.50. This is confirmed by balance-sheet (R. 645).

On page 657 (top) of the record, balance-sheet of May 31, 1921, shows surplus, printed in italics, $4,382,-136.70. This should have been printed in red, because it is a deficit of $4,382,136.70 and not a surplus.

The balance-sheet of April 30, 1921, appearing at page 613, shows a deficit of $3,425,217.33. The figures should have been in red. In the balance-sheet of November 30, 1921 (R. 658, top), the deficit of $9,103,-076.59 should have been printed in red.

Reply Brief.

We desire to call the Court's attention to the contentions of the Commission upon which they base solvency and ability of the McElwain Company to continue in business. The Commission, at pages 8 and 9 of its brief, calls attention to Mr. McElwain's letter of April 13, 1921 (R. 641-645, inclusive), wherein Mr. McElwain states that the debts of the corporation were

at peak on February 28 and would be materially reduced on May 31st, and advising the tide had turned in the affairs of the McElwain Company and that its production would increase from then on. Mr. McElwain's hopeful outlook prior to the trade was contrary to the result of actual operation as shown by the record. The indebtedness of the corporation in February was $17,330,596.89 (balance-sheet, R. 645). On May 31, 1921, as disclosed by its balance-sheet, at page 657 (top), the indebtedness of the corporation was $15,880,901.42, showing that in that period of time its indebtedness had been decreased $1,449,695.47. The question, however, is at what cost this indebtedness had been decreased. On February 28, 1921, the balance-sheet (R. 645) reflected a surplus of $1,286.044.50. On May 31, 1921, the balance-sheet (R. 657, top) showed a deficit of $4,382,136.70, or a difference between those dates of $5,668,181.20. In other words, it had taken in excess of five and a half million dollars of assets to liquidate less than a million and a half dollars of indebtedness.

In November, 1921, the liabilities were $13,701,494.37, which was a reduction as between February 28 and November 30 of $3,629,102.52. At that time there was a deficit, as shown by the balance-sheet (R. 658, top), of $9,103,076.59. This loss wiped out its surplus of $1,286,044.50, as shown by its balance-sheet of February 28 and showed that it had been necessary to use $10,389,121.09 of assets in retiring $3,629,102.52 of liabilities. This same balance-sheet further showed that the corporation then had total current working, or

quick, assets of $12,735,599.14 (R. 657) with which to pay $13,701,494.37 (R. 658, top). This was impossible.

These balance-sheets and these figures confirm the testimony of the witnesses in this case that the McElwain Company was facing insolvency and its executives knew it. Mr. King, vice-president and financial man of the company at the time of the transaction (R. 292), testified that it was the feeling of the executives of the company that it was rapidly going on the rocks. At page 294 he testified:

> "Q. Faced with this situation, what did the executives of the McElwain Company do?"
>
> "A. They considered all possible alternatives for saving the company from receivership and liquidation; a study was made of the possible alternatives; only one alternative seemed to offer any hope of success." * * * "That was to negotiate a sale of the company to the International Shoe Company," etc.

He further testified (R. 295) the directors at first did not authorize such negotiations, but when the recommendation was renewed with urgency and it was approved and "we immediately opened negotiations with the International Shoe Company, within an hour after the approval of the directors."

He further testified, that after authorization such negotiations were opened on April 8, 1921 (R. 297).

The question of solvency is further suggested in the brief of the Federal Trade Commission by reason of the fact that the International Shoe Company paid $9,600,000 (which was the net value of assets as shown

by balance-sheet) for the three classes of stock of the McElwain Company. The record shows (p. 299, testimony of Stanley King): "I offered, for McElwain and myself, to turn over our securities without return, and said we thought the other directors would agree to follow us, and suggested that the common stock be not considered in the transaction. Mr. Rand was unwilling to consider that proposal on the ground it would break the morale of the eastern organization, and a proposal was worked out, which was submitted, which was approximately 80 per cent for the McElwain first preferred; 80 per cent for the second preferred, and 60 per cent for the common." This was subsequently changed to 82½ per cent for the first preferred, 75 per cent for the second preferred, and 50 per cent for the common; the aggregate was $9,600,000.00, the value of the assets. The purpose of the application of the purchase price to the acquisition of the stocks, as the record shows, was in order to preserve the morale of the executives and operatives of the McElwain Company so that the International Shoe Company would acquire operating factories. The record also shows, and the Federal Trade Commission found, that the International Shoe Company, by reason of its inability to fill orders which it had on its books, was needing new shoe factories, and the record also shows that this was the primary purpose for the acquisition of the McElwain properties. The factories to the McElwain Company in its then condition were worthless, but to

the International Shoe Company, with its inability to fill orders, were most valuable.

The Commission in its brief, at page 25, says:

> "During the first nine months of its 1921 fiscal year, on an average capitalization of $13,130,350 (R. 645-656). The McElwain Company paid dividends of $644,090.75 (R. 646) or at an annual rate of over 6½ per cent."

However, the dividends were not paid out of earnings made in the fiscal year of 1921. Such dividends (as R. 646 clearly shows) were paid out of surplus in face of an operating loss of $1,958,305.48 for the period. In the letter to stockholders written May 24, 1921, President McElwain said (R. 578): "We find losses for the current year (*i. e.*, 1921) of $6,472,000," which is at an annual rate of about 49 per cent on the capitalization mentioned.

Mr. McElwain's letter to preferred stockholders urging them to sell their stock to International Shoe Company (R. 578-582) is in effect a confession of insolvency and inability of the McElwain Company to continue in business.

The fact that Lee Higginson and Company recommended to the first preferred stockholders the sale of their stock at 82½ is conclusive that in their judgment the McElwain Company could not continue in the shoe business, and the fact that the first preferred stockholders accepted such recommendation and sold at 82½ is conclusive that in their judgment they would have been worse off by liquidation.

A copy of this brief has been duly served on counsel for the Federal Trade Commission.

Respectfully submitted,

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APR 5
CHARLES ELMORE

FILE COPY

No. ~~118~~ 42

In the Supreme Court of the United States

OCTOBER TERM, 1928

INTERNATIONAL SHOE COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

U.S. GOVERNMENT PRINTING OFFICE: 1929

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Argument:	
I. The complaint of the Federal Trade Commission was sufficient	8
II. The Federal Trade Commission had power to order the petitioner to divest itself of the assets of the McElwain Company acquired by it through its stock control after the commission's complaint was served	9
III. Other questions sought to be raised by the petitioner are mere questions of fact which do not warrant review by this court	13
(1) The petitioner's contention that there was no substantial competition between the two corporations at the date of the acquisition of the stock	14
(2) The petitioner's contention that the acquisition of the stock of the McElwain Company did not lessen competition because the McElwain Company was insolvent and could no longer have competed	15
(3) The petitioner's contention that the original transaction by which the International Company obtained control of the McElwain Company, though in form a stock purchase, was in substance a purchase of assets, and therefore not a violation of the Clayton Act	18

CASES CITED

American Tobacco Co. v. *Federal Trade Commission*, 9 Fed. (2d) 570, 586	10
Chamber of Commerce of Minneapolis v. *Federal Trade Commission*, 280 Fed. 45, 48	10
Eastman Kodak Co. v. *Federal Trade Commission*, 7 Fed. (2d) 994, 996	10

	Page
Federal Trade Commission v. *Eastman Kodak Co.*, 274 U. S. 619	12
National Harness Mfgrs.' Ass'n v. *Federal Trade Commission*, 268 Fed. 705, 707	10
Sears, Roebuck & Co. v. *Federal Trade Commission*, 258 Fed. 307, 312	10
Swift & Company v. *United States*, 196 U. S. 375, 395	8
Thatcher Mfg. Co. v. *Federal Trade Commission*, 272 U. S. 554	10, 12
United Shoe Machinery Corp. et al. v. *United States*, 258 U. S. 451, 465	9
United States v. *United Shoe Machinery Co. et al.*, 234 Fed. 127, 150	9
Western Meat Co. v. *Federal Trade Commission*, 272 U. S. 554, 559, 560	10

OTHER AUTHORITIES CITED

Clayton Act, 38 Stat. 730, 735	1
Judicial Code, sec. 240 (a), as amended by the act of February 13, 1925	2
U. S. Code (title 15, sec. 21)	2

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 718

INTERNATIONAL SHOE COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

OPINION BELOW

The opinion of the United States Circuit Court of Appeals (R. 725) is reported in 29 F. (2d) 518.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 27, 1928. (R. 735.) The petition for certiorari was filed February 25, 1929.

The jurisdiction of this Court to issue a writ of certiorari is found in Section 11, paragraphs 3 and 4 of the Clayton Act (c. 323, 38 Stat. 730, 735; U. S.

C. Title 15, Sec. 21) and in Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Only two questions of law seem to be presented by the petitioner. The first is whether the complaint served by the Federal Trade Commission upon the petitioner, accusing it of having illegally acquired the stock of W. H. McElwain Company, was sufficient under Section 7 of the Clayton Act (Act of October 15, 1914, c. 323, 38 Stat. 730, 731). The second is whether, the petitioner having, after the filing of the complaint but before the Federal Trade Commission's final order, by virtue of its stock control of the W. H. McElwain Company, caused the assets of that company to be transferred to itself, the Federal Trade Commission had power to order it to divest itself of such assets. Other questions sought to be raised by the petitioner are mere questions of fact which have been decided adversely to the petitioner by the Federal Trade Commission, and the Circuit Court of Appeals has held that such adverse decisions were supported by the evidence.

STATUTE INVOLVED

The relevant portion of Section 7 of the Clayton Act is as follows:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share

capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

STATEMENT

The International Shoe Company was in 1921 the largest manufacturer of shoes in the United States. (R. 43, 209, 306.) It manufactured and sold a general line of shoes, including shoes for men, boys, women, misses, and children, and including a line of dress shoes for men, boys, women, and misses. (R. 40, 162, 164, 165, 283, 329.) On May 11, 1921, it acquired practically all of stock or share capital of W. H. McElwain Company (R. 46; Resp. Ex. 4, p. 616), the largest shoe manufacturer in New England and one of the four largest shoe manufacturers in the United States (R. 59, 306, 343, 354, 367; Com. Ex. 2; Resp. Ex. 26, p. 647). The W. H. McElwain Company manufactured dress shoes for men, boys, and misses. (R. 25, 283.)

The International Shoe Company distributed its shoes generally throughout the United States, selling almost exclusively to retailers. In the year from June 1, 1920, to May 31, 1921, it sold generally throughout the United States 754,835 pairs of dress shoes for men of its Patriot brand, for approximately two and one-half million dollars. (R.

171, 172, 450.) These shoes of the International Shoe Company consisted of thirty-two styles which were similar in style, comparable in price, and equal or superior in quality to the men's dress shoes produced by the W. H. McElwain Company. (R. 170, 175, 222, 431–4; Com. Ex. 13.) By dress shoes are meant shoes worn generally as distinguished from work shoes. (R. 44, 180, 220.) Many of the retailers in the largest cities throughout the country did not buy from the International Shoe Company because it refused to put the name of the individual retailer on the shoes.

W. H. McElwain Company did not manufacture a general line of shoes, but was the largest manufacturer of men's dress shoes in the United States. (Com. Ex. 2.) It sold its shoes direct to retailers, jobbers, and wholesalers throughout the United States (R. 118, 215, 216, 217; Resp. Ex. 24, pp. 642, 643), and sold its shoes also from branch houses operated under different names located in Boston, Masachusetts; New York City, N. Y.; Columbus, Ohio; Kansas City, Missouri; Chicago, Illinois; and San Francisco, California (R. 44, 215). Its sales direct to retailers were made chiefly to retailers in the larger cities, but it also sold direct to retailers in many of the smaller towns throughout a large part of the country. For the fiscal year ending May 31, 1921, it sold direct to retailers in eighty-eight towns of less than ten thousand inhabitants in eighteen States (Resp. Ex. 47), but the far greater proportion of its sales was made through its branch

houses and independent jobbers and wholesalers scattered generally throughout the United States (Resp. Ex. 24, 29, 37). The W. H. McElwain Company put the name of the retailer upon the shoes sold to the retailer when the retailer requested it.

Immediately after it acquired the stock of the W. H. McElwain Company on May 11, 1921, the International Shoe Company assumed control and direction of the W. H. McElwain Company and all competition between the two companies ceased. (R. 44, 224, 306, 416.) The International Shoe Company sold two of the branch houses of the W. H. McElwain Company and closed three others and stopped its policy of selling to independent wholesalers and jobbers and brought it in line with the International Shoe Company's policy of selling almost exclusively direct to retailers. (R. 47, 51, 81, 105.)

On May 18, 1923, the Federal Trade Commission issued a complaint against the International Shoe Company, Paragraph Three of which charged as follows (R. 31):

> On or about May 11, 1921, while the International Shoe Company and the W. H. McElwain Company were engaged in commerce in competition with each other as aforesaid, the International Shoe Company acquired the whole, or substantially all, of the stock or other share capital of said W. H. McElwain Company, and still owns and controls such stock or share capital so acquired. Such acquisition of such stock or share capi-

tal of the W. H. McElwain Company was contrary to law and violative of said Act of Congress approved October 15, 1914 (the Clayton Act), and especially Section 7 thereof. The effect of the acquisition by the respondent of such stock or other share capital of the W. H. McElwain Company was, to wit:

(a) To substantially lessen competition tween the W. H. McElwain Company, the corporation whose stock was so acquired, and the International Shoe Company, the corporation making the acquisition;

(b) To restrain commerce in the shoe business in the several sections and communities of the United States in which the respondent and the said W. H. McElwain were engaged in business in interstate commerce, as aforesaid;

(c) To tend to create in the respondent a monopoly in interstate commerce in the shoe business.

After the issuance and service upon petitioner of the complaint and before the petitioner filed its answer it put the stock of the W. H. McElwain Company which it held into the hands of dummies who passed the requisite votes and signed the necessary papers to transfer to the petitioner the property and assets of the said McElwain Company. Great effort was made by the petitioner to conceal the real nature of this transaction and to make it appear as an unsolicited offer by the dummies to buy the stock from petitioner and a bona fide and wholly disconnected purchase by the petitioner of

the property and assets of the company, after the sale of the stock. (R. 61–71, 103, 104, 121–125, 189, 228–279, 315, 317, 320–322, 371–373, 376, 403–407, 463–466; Com. Ex. 8, Resp. Ex. 41–44.) This transaction is completely set out in the findings of fact. (R. 514–522.) The petitioner, on June 5, 1922, filed with the Commission its answer containing, among others, the following averments:

> Fourth: And further answering the respondent would respectfully show this commission that upon receipt of the complaint, and upon being advised that there was a possible technical violation of Section 7 of the Clayton Act, in its acquisition and ownership of the share capital of W. H. McElwain Company, this respondent took the necessary steps to remedy such technical violation; that it has divested itself of any and all stock or share capital of W. H. McElwain Company; and that no officer, director or stockholder of respondent owns or controls any stock or share capital of said W. H. McElwain Company. Therefore, the premises considered, this respondent respectfully asks that the complaint be dismissed.

On November 25, 1925, the Commission issued its order directing the International Shoe Company to divest itself of the stock and share capital of the W. H. McElwain Company and of the properties and assets of said company acquired as a result of its acquisition of the stock of said company. (R. 499, 524–525.) The effective date of the order be-

came May 7, 1927, because of extensions granted by the Commission at the request of the petitioner. (R. 528–541.)

ARGUMENT

I

The complaint of the Federal Trade Commission was sufficient

Paragraph Three of the complaint, set forth in full in the statement of facts, alleged that while the International Company and the McElwain Company were engaged in commerce in competition with each other the International Company acquired the whole or substantially all of the stock of the McElwain Company and still owned and controlled such stock; that such acquisition of stock was violative of the Clayton Act; and that the effect of the acquisition was to substantially lessen competition between the two companies, to restrain commerce in the shoe business in the sections and communities in which the two companies were engaged in business in interstate commerce as set forth in the preceding portions of the complaint, and to tend to create in the respondent a monopoly in interstate commerce in the shoe business. It seems clear that these allegations were sufficient to bring the case within Section 7 of the Clayton Act. The complaint in a proceeding of this kind does not require the exactitude of an indictment at common law. *Swift and Company* v. *United States*, 196 U. S. 375, 395.

In *United States* v. *United Shoe Machinery Co.*, 234 Fed. 127, 150, affirmed, 258 U. S. 451, Judge Trieber said:

> For these reasons, in the opinion of the court, all that is necessary to state a cause of action under the Clayton Act is to charge that the defendants committed the acts prohibited by the statute and that they tend to substantially lessen competition or create a monopoly in interstate commerce.

In the case at bar the complaint alleged the unlawful acquisition of stock and that it tended to substantially lessen competition, to restrain commerce and to create a monopoly. Petitioner's attack on the complaint is apparently on the ground (Pet., p. 7) that it did not allege all of the detailed evidentiary facts tending to prove the ultimate facts which were alleged.

II

The Federal Trade Commission had power to order the petitioner to divest itself of the assets of the McElwain Company acquired by it through its stock control after the Commission's complaint was served

The petitioner seems to suggest that the Federal Trade Commission has not power to compel it to divest itself of the assets of the McElwain Company. If this were so, Section 7 of the Clayton Act would become practically a dead letter, because any company when attacked by the Commission for an illegal acquisition of stock in another company

could immediately use its stock control to have the assets of the other company transferred to it. Such a transfer could easily be accomplished before the Commission could try the case and issue its order. The Commission does not have the equitable power to order a continuance of the *status quo pendente lite.* (*National Harness Manufacturers' Assn.* v. *Federal Trade Commission,* 268 Fed. 705, 707; *Chamber of Commerce of Minneapolis* v. *Federal Trade Commission,* 280 Fed. 45, 48; *Sears, Roebuck & Co.* v. *Federal Trade Commission,* 258 Fed. 307, 312; *Eastman Kodak Co.* v. *Federal Trade Commission,* 7 Fed. (2d) 994, 996; *American Tobacco Co.* v. *Federal Trade Commission,* 9 Fed. (2d) 570, 586.)

While the majority of this court in *Thatcher Manufacturing Co.* v. *Federal Trade Commission,* 272 U. S. 554, held that the Clayton Act has no application to ownership of a competitor's property and business obtained *prior to* any action by the Commission, even though this was brought about through stock unlawfully held, it seems clear that both the majority and the minority opinions in the *Thatcher case* and the cases decided with it recognize that stock unlawfully held can not be used to acquire property *after* action by the Commission. Mr. Justice McReynolds, writing the opinion of the Court in the *Western Meat case,* said (pp. 559–560):

> The order here questioned was entered when respondent actually held and owned the stock contrary to law. The Commis-

sion's duty was to prevent the continuance of this unlawful action by an order directing that it cease and desist therefrom and divest itself of what it had no right to hold. Further violations of the Act through continued ownership could be effectively prevented only by requiring the owner wholly to divest itself of the stock and thus render possible once more free play of the competition which had been wrongfully suppressed. The purpose which the lawmakers entertained might be wholly defeated if the stock could be further used for securing the competitor's property. And the same result would follow a transfer to one controlled by or acting for the respondent.

Although the respondent held all the capital stock, the plant and other property of the Nevada Packing Company had not been acquired. The Commission directed that it so divest itself of all this stock as to include in such divestment the Packing Company's plant and property necessary to the operation thereof, etc. Taken literally, this goes beyond the situation revealed by the record, but the order must be construed with regard to the existing circumstances. Divestment of the stock must be actual and complete and may not be effected, as counsel for respondent admitted was intended, by using the control resulting therefrom to secure title to the possessions of the Packing Company and then to dissolve it. Properly understood, the order was within the Commission's authority, and the court below erred in direct-

ing the elimination therefrom of the above-quoted words.

And Mr. Justice Brandeis, in dissenting from the opinion in the *Swift* and *Thatcher cases,* said (p. 563):

> The institution of a proceeding before the commission under § 7 does not operate, like an injunction, to restrain a company from acquiring the assets of the controlled corporation by means of the stock held in violation of that section. If, in spite of the commencement of such a proceeding, the company took a transfer of the assets, the Commission could, I assume, require a retransfer of the assets, so as to render effective the order of divestiture of the stock.

In *Federal Trade Commission* v. *Eastman Company,* 274 U. S. 619, the Court merely followed the *Thatcher case.* Mr. Justice Stone in his dissenting opinion, referring to that case, said (p. 626):

> It was not held that the Commission under no circumstances could compel the sale of physical property, and there was in fact a clear intimation in the opinion that under § 7 of the Clayton Act the acquisition of the property after a complaint had been filed against the corporation for illegal stock purchases would not find the Commission powerless.

There is nothing in the majority opinion which is inconsistent with this statement.

The petitioner complains of the practical difficulties which it will encounter in any attempt to divest itself of the assets of the McElwain Company. While there may be some such difficulties, there is no doubt that a satisfactory plan for the divestiture can be devised. If the petitioner suffers somewhat from its action in acquiring the assets of the McElwain Company, it has only itself to blame, for it accomplished such acquisition after it had received the complaint of the Federal Trade Commission.

III

Other questions sought to be raised by the petitioner are mere questions of fact which do not warrant review by this Court

The greater portion of the petition and the brief in support thereof is devoted to argument upon questions of fact which have been decided adversely to the petitioner by the Federal Trade Commission. The Circuit Court of Appeals has held that such adverse decisions were supported by the evidence, and of course if this is true the findings are, under Section 11 of the Clayton Act, conclusive. The Circuit Court of Appeals said (R. 727–728):

> It is not seriously contended that any of the findings of fact of the Commission are unsupported by the testimony. Petitioner merely seeks to induce this Court to hold the Commission wrong in its inferences from the

> facts, and on that ground alone to reverse the order.
>
> Nevertheless, we have carefully examined the record and the petitioner's two briefs, with the result that we find that the inferences of the Commission are not only reasonably drawn from undisputed facts, but that no other inferences could, reasonably, be so drawn.

Under these circumstances it seems clear that none of the petitioner's contentions as to the facts presents any question warranting review of the case by this Court, and no extended analysis of the evidence supporting the Commission's findings seems necessary. It may be of assistance to the Court, however, if we discuss briefly the petitioner's various contentions.

(1) *The petitioner's contention that there was no substantial competition between the two corporations at the date of the acquisition of the stock.*

In the first place the existence of substantial competition is not required by Section 7 of the Clayton Act. The requirement is that—

> * * * the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition * * *.

That this was the effect of the acquisition by the International Company of the stock of the McElwain Company is specifically found in Paragraph Twenty-Three of the Commission's findings. (R.

512.) The Commission also found, however, that there was substantial competition between the two corporations at the time of the acquisition of the stock. (R. 502.)

Paragraphs Five and Six containing this finding were quoted in the opinion of the Circuit Court of Appeals which said (R. 730):

> The findings in these paragraphs are fully supported by the testimony and are therefore conclusive on this Court.

The facts set forth in the statement in this brief fully support the findings of the Commission and no further or more detailed analysis of the testimony seems necessary.

(2) *The petitioner's contention that the acquisition of the stock of the McElwain Company did not lessen competition because the McElwain Company was insolvent and could no longer have competed.*

Of this contention the Circuit Court of Appeals (R. 731) said:

> While the McElwain Company had suffered substantial losses in the tremendous slump in prices of 1920–21, there is no foundation whatever for the petitioner's contention that (except for this purchase) the concern would have gone out of existence and therefore out of competition with the petitioner. On the contrary, there were several alternatives—all reasonable and inconsistent with the petitioner's theory that the McElwain Company's losses suffered and conse-

quent shortage of working capital, would (except for the merger with petitioner) have put it out of the shoe-producing business. Some of these alternatives are:

(a) The McElwain Company's bank creditors might have carried the concern, just as at that time the banks were carrying a very large percentage of the business concerns of this community. It was a period of "frozen credits," a time when there was practically a conceded moratorium to a large share of our business concerns, which competed fiercely for rehabilitating trade.

(b) If a receivership had been found a necessary expedient, competition under receivership management would have been likely to be intensified, not eliminated.

(c) In case of actual bankruptcy, the holders of the preferred stock (one or both classes) would in their own interest have taken over the property, kept it in active operation and therefore in competition.

To hold, as petitioner's counsel ask this court to hold, that the Commission was bound to draw the inference that the McElwain Company's financial condition was such that it would have ceased to be a competitor of the International in the shoe business, would be for the court, *ultra vires,* to substitute a highly speculative prophecy for the Commission's fair and soundly grounded contrary inference.

Since the Federal Trade Commission found that the effect of the acquisition of the stock of the

McElwain Company was to substantially lessen competition (R. 512), it must have found that the McElwain Company was capable of competing. The only specific findings as to the financial condition of the McElwain Company, however, are those contained in paragraph twenty-four of the Findings (R. 512–513), which are to the effect that at various dates shortly before and shortly after the acquisition of the stock of the McElwain Company by the International Company the value of the assets of the McElwain Company was in excess of its indebtedness. The International Company after an examination of the books paid $9,463,590.20 for the stock of the McElwain Company (R. 127, 195, Resp. Ex. 2), which is persuasive evidence that the International Company thought that the net value of the McElwain Company over and above its indebtedness amounted to that much. Moreover, the record shows that the McElwain Company's credit had not been restricted (Com. Ex. 1, R. pp. 357, 369); that the McElwain Company had never defaulted in dividends on its first preferred or its second preferred stock (Com. Ex. 1, Resp. Ex. 30, R. p. 324). The record fails to show that any creditor was crowding it for payment or that it was not paying its bills in the regular course of business as they became due. The McElwain Company's cash on hand, receivables, and merchandise, at the then market values, exceeded its total current liabilities by more than $3,200,000 at the time its stock was

purchased by petitioner. (Resp. Ex. 1.) The record clearly shows that the McElwain Company's properties have been operated at a profit since petitioner acquired its stock. (R. pp. 197, 275, Resp. Ex. 26, Ex. A, p. 553, Ex. A, p. 559).

It may be admitted that the McElwain Company was, as petitioner contends, in financial difficulties. It may also be admitted that, as the petitioner contends, a concern may have assets of greater value than its liabilities and still be unable to continue in business. But in the present case it is absolutely inconceivable that the McElwain Company would have been compelled to cease business altogether if its stock had not been purchased by the International Company. Drastic steps might have been necessary in order to take care of its indebtedness; both stockholders and creditors might have had to make sacrifices to carry the company through the period of depression existing in 1921; yet it seems perfectly certain that this concern for whose stock the International Company was willing to pay over nine million dollars would have continued in business in some manner or other if the International Company had not purchased the stock.

(3) *The petitioner's contention that the original transaction by which the International Company obtained control of the McElwain Company, though in form a stock purchase, was in substance a purchase of assets, and therefore not a violation of the Clayton Act.*

Even if the transaction had been in substance a purchase of assets, it may be doubted whether the International Company, having chosen to give it the form of a purchase of stock, could escape the ban of the Clayton Act. But it is perfectly clear that the transaction was the same in substance as in form—a purchase of stock and not a purchase of assets.

The Circuit Court of Appeals said (R. 733–734):

> Another groundless contention of the petitioner is "that, in substance and reality, the purchase was one of assets and business." It was not. The petitioner refused to have anything to do with the merger on the basis of purchasing assets and business; it not only insisted upon the purchase of the stocks, but insisted that the purchase price, nearly $9,500,000, should be so divided among the three classes of stocks as to require a sacrifice of 17½% (about $1,220,000) from par by the holders of the first preferred (the investing public); and 25% (about $650,000) by the second preferred, in order that the holders of the common stock—which had been wiped out by the losses—might obtain 50%. The common stock then had the voting power and was held mostly by the executive forces; the purchaser wanted, for obvious business reasons, to retain the effective managerial forces of this concern in good courage and friendly attitude, when undertaking long-distance management of the McElwain Company's great business. The mo-

tives on both sides to put through a merger so advantageous to voters in the selling company are obvious.

The record shows that the International Shoe Company refused to buy the assets of the W. H. McElwain Company at any price (R. 58, 89, 292, and Com. Ex. 1), and that a price was worked out for the three classes of McElwain stock upon the basis of its net assets, after petitioner had had a careful examination of the books of the company made, which gave to the first preferred stockholders 82½% of the par value of the stock, and to the second preferred stockholders 75% of the par value of the stock, and to the common stockholders 50% of the par value of the stock (R. 92, 196; Resp. Ex. 4). The International Shoe Company paid, for all but thirty-five shares of the first preferred and fifty shares of the common stock of the W. H. McElwain Company, $9,463,590.20. (R. 127, 195; Resp. Ex. 2.) The capital liability of the W. H. McElwain Company at the time was $13,092,900.00. (Resp. Ex. 1.) The acquisition of the stock was admitted by the petitioner in its answer to the complaint. (R. 32.)

The record indicates that had the petitioner purchased the assets instead of the stock of the W. H. McElwain Company it would have had trouble with some of the stockholders, particularly the common stockholders, the officers, and directors of the company, who would have received nothing for their stock at the price paid by the International Shoe

Company. (R. 62, 65, 312, 422, 463, 464; Resp. Ex. 1.)

CONCLUSION

The case presents no substantial question of law and the petition should therefore be denied.

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OCTOBER TERM, 1929

INTERNATIONAL SHOE COMPANY, PETITIONER

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FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	4
Summary of argument	14
Argument:	
I. The Federal Trade Commission's determination of substantial competition between petitioner and W. H. McElwain Company in May, 1921, is supported by the facts and the inferences reasonably to be drawn therefrom	16
II. The evidence does not establish that the McElwain Company would have gone out of business, thereby terminating competition, if its stock had not been acquired by petitioner in May, 1921	23
III. The Federal Trade Commission had power to order petitioner to divest itself of the assets of the McElwain Company acquired by petitioner after the Commission had issued a complaint charging it with violating Section 7 of the Clayton Act	28
IV. The complaint of the Federal Trade Commission was sufficient	32
Conclusion	33

CITATIONS

Cases:

Aluminum Company of America v. *Federal Trade Commission*, 284 Fed. 401; certiorari denied, 261 U. S. 616	27, 33
American Press Association v. *United States*, 245 Fed. 91	27
Chamber of Commerce v. *Federal Trade Commission*, 280 Fed. 45	31
Federal Trade Commission v. *Pacific Paper Association*, 273 U. S. 52	15, 17
Federal Trade Commission v. *Thatcher Manufacturing Company*, 5 F. (2d) 615	22
Federal Trade Commission v. *Western Meat Company*, 272 U. S. 554	2, 16, 29
National Harness Manufacturers' Association v. *Federal Trade Commission*, 268 Fed. 705	31

Cases—Continued. Page

Standard Fashion Company v. *Magrane-Houston Company*, 258 U. S. 346 17

Swift & Company v. *Federal Trade Commission*, 8 F. (2d) 595; 272 U. S. 554 ..... 28, 29

Swift & Company v. *United States*, 196 U. S. 375 32

Thatcher Manufacturing Company v. *Federal Trade Commission*, 272 U. S. 554 ..... 5, 22, 29

United Shoe Machinery Corporation v. *United States*, 258 U. S. 451 17

Statutes:

Clayton Act, c. 323, Sec. 7, 38 Stat. 730, 731 (U. S. C. Title 15, sec. 18) 2

Clayton Act, c. 323, Sec. 11, 38 Stat. 730, 734 (U. S. C. Title 15, Sec. 21) 3

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 42

INTERNATIONAL SHOE COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINION BELOW

The opinion of the Circuit Court of Appeals for the First Circuit (R. 705) is reported in 29 F. (2d) 518.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 27, 1928. (R. 715.) Petition for certiorari was filed February 25, 1929, and was granted May 20, 1929. (R. 716.)

Jurisdiction of this Court rests on Section 11 of the Clayton Act, c. 323, 38 Stat. 730, 735 (U. S. C.

Title 15, Sec. 21), as amended by the Act of February 13, 1925. *Federal Trade Commission* v. *Western Meat Company,* 272 U. S. 554, 557.

QUESTIONS PRESENTED

The questions presented are (1) whether there is sufficient evidence to support the determination of the Federal Trade Commission that petitioner's acquisition of the stock of W. H. McElwain Company in May, 1921, had the effect of substantially lessening competition between the companies in violation of Section 7 of the Clayton Act, (2) whether the financial condition of the McElwain Company in May, 1921, was such that the only reasonable inference is that it would have gone out of business but for petitioner's purchase of its stock, (3) whether the Clayton Act authorized the Commission to order petitioner to divest itself of assets of the McElwain Company which petitioner acquired after it had been charged with violating Section 7, and (4) the sufficiency of the Commission's complaint.

STATUTE INVOLVED

Section 7 of the Clayton Act, c. 323, 38 Stat. 730, 731 (U. S. C., Title 15, Sec. 18), provides:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen compe-

tition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Section 11 of the Clayton Act, 38 Stat. 734 (U. S. C., Title 15, Sec. 21), provides:

> That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:
>
> Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. * * * If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to

the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. * * *

The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. * * *

STATEMENT

A complaint issued by the Federal Trade Commission on May 18, 1923, charged that petitioner on or about May 11, 1921, acquired substantially all the stock of the W. H. McElwain Company, which it still owned, and that such acquisition had the effect of substantially lessening competition between these companies and was a violation of Section 7 of the Clayton Act. (R. 21.)

The Commission, after extensive evidence had been introduced, found on November 25, 1925 (R. 519), two Commissioners dissenting (R. 544–547), that petitioner's acquisition of the McElwain stock had the effect of substantially lessening competition between the companies and of restraining commerce in various sections or communities (R. 532); that the transactions, after the Commission's complaint had been issued, by which petitioner undertook to divest itself of the McElwain stock and to acquire its assets, were not bona fide and

were "a mere artifice and subterfuge to evade" the Clayton Act and to escape its penalties (R. 541). It concluded that the acquisition of the McElwain stock constituted a violation of Section 7 of the Clayton Act. (R. 542.) It ordered petitioner to divest itself of the McElwain assets which it found had been acquired and were then held as a result of an illegal acquisition of the McElwain stock and to submit within sixty days a plan for the performance of the Commission's order. (R. 543–544.)

Petitioner thereafter made various motions for reconsideration and suspension of the Commission's order. (R. 547, 548, 549, 556.) After the decision in *Thatcher Manufacturing Company* v. *Federal Trade Commission,* 272 U. S. 554, the case was reargued, and on May 10, 1927, the Commission reaffirmed its former order. (R. 558.) On March 3, 1928, a petition to review the Commission's order was filed in the Circuit Court of Appeals and that court unanimously affirmed the Commission's order. (R. 705–714.)

W. H. McElwain Company was in 1921 among the five largest shoe manufacturers in the United States (R. 313–314, 366), the largest in New England (R. 353), and the largest producer in the world of men's and boys' dress shoes (Com. Ex. 2, R. 590). The term dress shoes in this connection means a shoe worn generally as distinguished from those primarily for rough wear, known as work shoes. (R. 177, 221.)

The McElwain Company made medium-priced shoes (R. 158, 647), and in 1921 practically all its production was men's dress shoes (R. 469). It sold its shoes to retailers, jobbers, and wholesalers, and seven branch wholesale houses which it owned or controlled, located in Boston, New York City, Columbus, Chicago, San Francisco, and Kansas City, Missouri. (R. 36–37, 661.) In the year ended May 31, 1921, it sold shoes direct to retailers in 36 States (R. 692–694) and in two other States sold to wholesalers (R. 661).

Petitioner is, and was in 1921, the largest shoe manufacturer in the United States. (R. 34, 208, 313–314.) It made a general line of medium priced men's, women's, boys', misses' and children's shoes (R. 158) and sold exclusively to retailers (R. 112). During the year ended May 31, 1921, it sold in all the 38 States in which the McElwain Company was also selling, except three New England states. (R. 692–694.) According to petitioner's figures, it sold shoes during this period to all the retailers in Kentucky, Mississippi, Tennessee, and Texas and to over 93% of the retailers in Missouri. (R. 693.) During the same period the McElwain Company sold not only to retailers but also to an independent jobber or jobbers in all of these five States. (R. 663, 693.) In Tennessee the McElwain Company sold to 15 retailers and 11 jobbers. (R. 663, 693.) In Missouri it sold to 36 retailers and 6 jobbers (R. 663, 693), and over 15,000 dozen pairs of shoes to

its Kansas City wholesale branch house (R. 661), which in turn was selling exclusively to retailers (R. 165). Both companies sold shoes in the same cities. (R. 60.)

Included among the shoes made and sold by petitioner was a dress shoe for men known as its Patriot brand. Its 1913 catalogue showed 25 different styles of this brand, and its 1921 catalogue 32 different styles. (R. 166.) Its annual production of this brand was from 800,000 to 850,000 pairs, representing sales of about $2,500,000. (R. 168.) These shoes were comparable in price, similar in style and at least equal in quality to the shoes made by the McElwain Company. (R. 158, 166–168, 172, 339–340.) After petitioner acquired the McElwain Company it applied some of that company's shoes to the orders which it had, and it distributed McElwain shoes among its salesmen and sold them to its regular customers. (R. 42.) In the year ended May 31, 1921, petitioner sold its men's dress shoes to 16 retailers to whom the McElwain Company was selling direct. (R. 692–694.)

It is submitted that the statement on page 31 of petitioner's brief that by "similar in style" is meant that both companies made high shoes and low shoes is not correct (R. 166–168, 339–340) and is not supported by petitioner's citation (R. 340). Page 5 of petitioner's 1921 catalogue (Com. Ex. 13, R. 603) shows certain low shoes which the president of petitioner marked as similar to McElwain shoes

(R. 339–340) and also shows other low shoes not so marked. If " similar in style " meant merely that both companies made low shoes, all the low shoes on this page would have been marked.

Negotiations with petitioner in 1921 leading to its acquisition of the McElwain stock were conducted on behalf of the McElwain Company entirely by its President, J. F. McElwain, and its Vice-President, Mr. King, except that Mr. Storrow, as a representative of first preferred stockholders, participated in later stages of the discussion. It was these same two officers who requested the necessary authority from the McElwain board of directors. (R. 295.) The directors at first declined to give this authority and only granted it when the recommendation was renewed some weeks later, with urgency. (R. 295.) This approval appears to have been first given on May 6, 1921 (R. 79), only five days before the final agreement was signed (R. 87).

In the latter part of March, 1921, Mr. McElwain proposed to Mr. Johnson, chairman of petitioner's board of directors, a large consolidation of shoe manufacturers. This proposal was rejected, and no suggestion was made at that time of a separate consolidation of the two companies. (R. 143–144.) On April 8, 1921, Messrs. McElwain and King again conferred with Mr. Johnson. (R. 144.) Subsequently in response to his request for information as to McElwain's financial condition, Mr.

McElwain wrote him that the debts were at the peak on February 28th and would be materially decreased on May 31st; that the sound value of the plant account had been appraised within two years at approximately $2,000,000 above book figures; that production of men's shoes in the East during the past two or three months had been decidedly subnormal, but that the tide had turned and the facts indicated that production would increase from that time on; that McElwain's shipments during the past month had been excellent; that its sales force seemed to be extremely enthusiastic and confident of good results; and that the lowest sale of its common stock which had recently come to their attention was $55 a share against a par value of $50. (R. 640, 642, 644.)

Negotiations were resumed in Boston and New York April 25th, 26th, 27th, and 28th, and again in St. Louis on May 8th. (R. 78–79.) At the latter time the McElwain balance sheet on April 30th was submitted (R. 80), with inventory brought down to market (R. 78) and the final agreement signed on May 11th permitted petitioner to withdraw if this balance sheet was not confirmed by an audit by public accountants (R. 618). The final agreement provided that petitioner would exchange shares of its own stock having a market value of over $9,460,000 for all the McElwain stock on such basis that McElwain first preferred stockholders would receive 82½% of par, its second preferred stockholders 75%

of par, and its common stockholders 50% of par. (R. 85, 87, 614.) Messrs. McElwain and King signed the agreement on behalf of themselves and eight other McElwain directors, who together held a majority of its common stock. (R. 79, 616, 619.)

When the agreement was signed the McElwain first preferred stock was in the hands of the public, the second preferred stock was owned almost altogether by the McElwain organization and their families, and two-thirds of the common stock was owned by its officers and operating executives. (R. 225, 642.) The common stock then had sole voting power. (R. 224–225.) The agreement gave the McElwain common stockholders the right to acquire stock worth almost $1,750,000, although the total value of all the stock offered by petitioner to McElwain stockholders was more than $100,000 less than the par value of its preferred stock then outstanding. (R. 613, 614.) Mr. Storrow, representing the first preferred stockholders, at first refused to approve the agreement and did so only after Mr. King had told him that it was essential that he do so, that the management of the company was on the edge of a breakdown. (R. 300.)

A letter to petitioner's stockholders dated June 16, 1921, signed by the chairman of its board, stated that the acquisition of the McElwain Company and of a tanning company represented a book profit of about $1,000,000 "based on true values of the purchased properties as evidenced by the inventories

and appraisals submitted to us when the purchases were made." (R. 646–649.)

After the Commission had issued its complaint on May 18, 1923, petitioner as a means of meeting this situation decided to take over the McElwain assets and to liquidate the company. (R. 96.) Mr. Blake, petitioner's attorney, went to Boston to carry out this plan. After his arrival Mr. King, who had been the chief executive officer of the McElwain Company since May, 1921 (R. 435), telephoned Mr. Rand, petitioner's president, that he had a different program and obtained full authority from Mr. Rand to go ahead (R. 63).

Late in May or early in June officers and directors of the McElwain Company connected with petitioner resigned and were replaced by friends and business associates of King. (R. 335, 412.) Mr. Warren, for many years the McElwain attorney, became president and a director and his secretary became treasurer, clerk and a director. (R. 392, 410–412.) On June 14th King obtained an option on a $4,000,000 day loan to petitioner from the National Bank of Commerce of New York. (R. 324, 328.) On the 15th King on behalf of petitioner entered into a written contract with Bennett, Limited, whereby petitioner sold, transferred and assigned to Bennett, Limited, substantially all the outstanding McElwain first preferred stock and 491 shares out of some 70,000 outstanding shares of its common stock for a purchase price of

$4,061,094.14. (R. 248, 638.) Bennett, Limited, was a Canadian corporation engaged in the business of making leather and fibre board and the sale of water power; it was not a dealer in securities and so far as King knew, it had no office in the United States. (R. 271, 336.) King testified that he verbally agreed that petitioner would surrender for cancellation, or would procure and have cancelled, all the remaining outstanding McElwain stock, and petitioner later paid $39.50 a share for the common stock which it had not previously acquired. (R. 246, 248.)

On the 16th the McElwain Company opened an account with the National Bank of Commerce of New York by depositing $1,000. (R. 608.) On the 15th or 17th King received in payment for the McElwain stock sold to Bennett, Limited, an uncertified check of Bennett, Limited, for $4,061,094.14, payable to petitioner drawn on the National Bank of Commerce, where its balance was then under $5,000. (R. 256, 611.) King took no steps to find out whether this check was good. (R. 267–268.) On the 19th the McElwain stock covered by the agreement of the 15th was transferred into the name of Bennett, Limited. (R. 498.) On the 20th a meeting of the stockholders of the McElwain Company, attended by Messrs. King, Warren, Blake and a Vice-President of Bennett, Limited, voted to cancel the second preferred and common stock then owned by petitioner; to

accept an offer by petitioner dated June 4, 1923, to purchase all of its assets and assume all its liabilities for $4,063,125.89; and to distribute this purchase price to its stockholders as a liquidation dividend. (R. 677.) On the same day or shortly thereafter instruments conveying its assets to petitioner were executed. (R. 264–265.)

On the 21st petitioner deposited to its account at the National Bank of Commerce of New York the proceeds of the $4,000,000 day loan made to it by that bank; petitioner's check to the McElwain Company for $4,063,125.89 was deposited to the latter's account; McElwain's check to Bennett, Limited, for $4,061,093.72, representing a liquidation dividend, was deposited to the credit of Bennett, Limited; the check of Bennett, Limited, to petitioner for $4,061,093.72 (the written contract called for $4,061,094.14) was deposited to petitioner's credit; and petitioner's $4,000,000 day loan was paid back by the bank charging the amount to petitioner's account. (R. 407–408, 503, 505.) The deposit slips for the four foregoing deposits were all in King's handwriting. (R. 321, 513–514.)

Thus at the end of the day approximately $4,000,000 had changed hands five times and none of the parties remained indebted to another. Except for $2,032.17 reserved to take up 35 shares of first preferred stock not yet acquired, the cash balances of all the parties remained the same as before the transaction; but the assets of the McElwain

Company had been transferred into the name of the petitioner.

Petitioner's answer to the Commission's complaint filed on July 5th stated that it had remedied any technical violation of the Clayton Act by divesting itself of the McElwain stock. (R. 533.) Petitioner's officers in testifying before the examiner endeavored to make it appear that there had been a sale of the McElwain stock entirely dissociated from the subsequent acquisition of its assets. (R. 123–124, 241–246, 251.) Concerning this the lower court said (R. 713):

> The best that petitioner's counsel is able to say in defense of this transaction is that it did not deceive the Commission.

The McElwain Company was in existence as a separate corporate entity when the taking of testimony before the examiner closed. (R. 410, 411, 501, 517.)

SUMMARY OF ARGUMENT

I. Section 7 of the Clayton Act prohibits the acquisition by one corporation of stock of another where the effect may be to substantially lessen competition between them. Since the section deals with probabilities, rather than certainties, potential as well as actual competition is a factor in determining whether the statute has been violated. In this case petitioner in May, 1921, acquired practically all the stock of W. H. McElwain Company and the effect thereof was to terminate competition

between them. There is thus left open only the question of substantial actual or potential competition between the companies in May, 1921, and the Federal Trade Commission's determination on this point is fully supported by the facts and the inferences reasonably to be drawn therefrom. The courts will not reverse an order of the Commission based on inferences reasonably drawn from admitted or proven facts. *Federal Trade Commission* v. *Pacific Paper Association,* 273 U. S. 52, 63.

II. Petitioner's contention that the financial condition of the McElwain Company in May, 1921, would have eliminated it as a competitive factor if petitioner had not acquired its stock rests on the slender foundation that this company would have shortly become insolvent. Not only is the inference of impending insolvency highly speculative and based on an exaggerated statement of the McElwain Company's financial difficulties, but the inference does not even tend to show that if a receivership had resulted the receiver would have discontinued operations. Petitioner has completely failed to show that the only reasonable inference to be drawn from the facts is that the McElwain Company would have gone out of business if the petitioner had not acquired its stock.

III. The jurisdiction of the Commission, obtained when it filed its complaint charging a violation of Section 7 of the Clayton Act, was not defeated because petitioner subsequently used its

illegal stock control to take over the McElwain assets. Under Section 11 of the Act the Commission may make a proper order to cease and desist from a violation of Section 7. This gives the Commission power to require an offending corporation to rid itself both of stock illegally held and of assets which its illegal stock control would enable it to acquire (*Federal Trade Commission* v. *Western Meat Company, supra*). The Commission's order directing petitioner to divest itself of the McElwain assets is therefore valid. If the Commission does not have such power, Section 7 is a dead letter.

IV. The Commission's complaint fully apprised petitioner of the charge it was called upon to meet and the complaint is not invalid because it did not allege detailed evidentiary facts.

ARGUMENT

I

THE FEDERAL TRADE COMMISSION'S DETERMINATION OF SUBSTANTIAL COMPETITION BETWEEN PETITIONER AND W. H. M'ELWAIN COMPANY IN MAY, 1921, IS SUPPORTED BY THE FACTS AND THE INFERENCES REASONABLY TO BE DRAWN THEREFROM

Section 7 of the Clayton Act prohibits one corporation engaged in interstate commerce from acquiring all or a part of the stock of another corporation so engaged where the "effect * * * may be" to substantially lessen competition between them. The section deals with probabilities, not certainties, and, on the other hand, not mere

possibilities. *Standard Fashion Company* v. *Magrane-Houston Company,* 258 U. S. 346, 356–357. Probable future competition—that is, potential competition—is a factor in determining whether the effect of a stock acquisition may be to substantially lessen competition. Petitioner has adopted this view of the statute in contending that the impending insolvency of the McElwain Company in May, 1921, would have shortly eliminated it as a competitive factor.

Petitioner's acquisition of practically all the McElwain stock in May, 1921, not only substantially lessened, it effectually put an end to, all competition between these two companies. This much petitioner appears to concede. (Brief, p. 20.) The question at issue, therefore, is the justification for the Commission's determination of substantial competition in May, 1921. Its determination, if supported by the facts or by the inferences reasonably to be drawn therefrom, is conclusive. *Federal Trade Commission* v. *Pacific Paper Association, supra,* p. 63.

The scope and application of Section 7 are not measured, as contended by petitioner, by the decisions construing unreasonable restraint of trade and monopoly under the Sherman Act. In *United Shoe Machinery Corp.* v. *United States,* 258 U. S. 451, which involved the prohibitions of Section 3 of the Clayton Act against tying contracts where the "effect * * * may be to substantially lessen

competition or tend to create a monopoly" this Court said (pp. 459–460):

> The Sherman Act and the Clayton Act provide different tests of liability. This was determined in the recent case of *Standard Fashion Company* v. *Magrane-Houston Company, ante,* 346. In that case we pointed out that the Clayton Act was intended to supplement the Sherman Act, and within its limited sphere established its own rule. * * *

Petitioner and the McElwain Company were clearly in competition prior to May, 1921. Both companies made a medium priced dress shoe for men, that is, one suitable for general city or town wear. Both sold extensively in many of the same States. Both sold in some of the same cities. In several cases both sold the same type of shoe direct to the same retailer. That one company used only leather and the other partly substitutes, or that one company emphasized wearing qualities and the other finish (petitioner's brief, pp. 6–7), is no indication of lack of competition. These differences may have led to keener competition than would have arisen from offering purchasers identically the same article.

Competition between the companies was also substantial. While the type of competitive shoe represented a comparatively small per cent of the total production of one company, it represented almost the entire output of the other. For both companies the annual sales volume of the competitive type of

shoe was large, for one company $2,500,000 (*supra*, p. 7), and for the other at least $15,000,000 (R. 661). While in certain regions, chiefly New England, the Record does not indicate much competition, in other regions both companies sold extensively. Petitioner's principal place of business is in Missouri and its customers' list during the year ended May 31, 1921, included 93% of the total number of retailers listed in that State (*supra*, p. 6). During the same period, when the McElwain Company's output and sales were far below normal, it sold in Missouri 25,659 dozen pairs, or 615,816 shoes, as follows:

	Dozen pairs
Retailers (R. 660)	5,939
Wholesaler (R. 661)	15,453
Jobbers (R. 663)	4,267
Total	25,659

During the same period petitioner was selling to over 70% of the California retailers (R. 694), and McElwain's net sales to its wholesale house in California were over $357,000 (R. 661), in addition to sales of 790 and 796 dozen pairs to retailers and jobbers, respectively (R. 660, 663).

The statement on page 8 of petitioner's brief that it sold only 52½ dozen pairs of men's dress shoes in the year ended May 31, 1921, to McElwain customers does not tell the entire story. The figures were obtained by computing petitioner's sales of its men's dress shoes to McElwain customers. Since petitioner sold only to retailers, the sales of the

McElwain Company to wholesalers and jobbers were eliminated from the comparison and computation. (See a trifling exception, R. 450.) Of the total McElwain sales for the year ended May 31, 1921, only one-fifth were direct to retailers, and of its total sales to wholesalers, jobbers, and retailers, less than one-fourth were direct to retailers. (R. 661.) Furthermore, the McElwain Company in its sales direct to retailers catered to large retailers, leaving to its wholesalers and jobbers the field of the small retailers to whom petitioner chiefly sold. (Petitioner's brief, p. 7.) The reasonable inference is that many times 52⅓ dozen pairs of petitioner's men's dress shoes were sold to retailers who were at the same time purchasing McElwain shoes.

Competition is not a narrow term embracing only such sales as are made to the same type of marketing organization. The basic competition between manufacturers is for the favor of the ultimate consumer. If two manufacturers, as in this case, sell in the same territory a medium-priced shoe designed for the same kind of consumer, their competition is not limited to the sales made direct to retailers; it covers the entire sales volume so far as it is distributed in the same general territory.

The figures showing the retailers purchasing at the same time the same type of shoe direct from both companies, even when understood as resulting from consideration of less than one fifth of the McElwain sales, are not an adequate test of competition. Retailers, particularly small retailers, do

not ordinarily put in two different stocks of the same type of shoe. The McElwain shoe, whether sold to retailers direct or through intermediate wholesalers or jobbers, might prevent petitioner from extending, or might cut off, the number of retailers purchasing its dress shoe for men, and the two companies be in active competition although no single retailer bought men's dress shoes at the same time from both companies.

The same objection lies against petitioner's comparison of the customers of the two companies based on size of the cities where located (brief, p. 8), namely, that it does not reflect the retailers who obtained shoes from McElwain wholesalers or jobbers. Of course, wholesalers and jobbers are in large centers. With respect to the retailers to whom the McElwain Company sold direct, figures presented by petitioner show that during the year ended May 31, 1921, 88 out of a total of 380, or over 23%, were in towns of less than 10,000. (R. 690–694.) The statement on page 8 of petitioner's brief that 95% of its sales were in towns or communities of 6,000 inhabitants or less is the estimate of the chairman of its board made on cross-examination. It did not purport to be based on any examination of sales records. It is a percentage of total sales, only a small part of which were men's dress shoes. Petitioner did not offer to show what percentage of its men's dress shoes were sold in towns of less than 6,000 or of less than 10,000.

The facts in this case wholly differentiate it from *Thatcher Manufacturing Company* v. *Federal Trade Commission*, 272 U. S. 554, 560. In that case this Court said that it agreed with the court below that the Woodbury Glass Company was not in competition with the Thatcher Company within the meaning of the statute. The lower court, in *Federal Trade Commission* v. *Thatcher Manufacturing Company*, 5 F. (2d) 615, 622, had found that the Thatcher Company was engaged in the manufacture of milk bottles; that the Woodbury Company was engaged chiefly in the manufacture of condiment and whiskey bottles; that its manufacture of milk bottles stock was very small; that the Thatcher Company's real object in acquiring the Woodbury stock was to obtain a patent license to manufacture bottles in a branch of the glassware business in which it was not then engaged. As to the Woodbury Company it said:

> The evidence also shows that it was gradually getting out of the milk bottle business and that, indeed, before the transaction in question arose it had determined to do so. * * *

There was therefore in that case not only no substantial competition, there was no prospective competition of any kind.

The question of substantial competition is one of fact. The lower court stated that it had carefully examined the record—

> with the result that we find that the inferences of the Commission are not only reason-

ably drawn from undisputed facts, but that no other inferences could, reasonably, be so drawn. (R. 708.)

II

THE EVIDENCE DOES NOT ESTABLISH THAT THE M'ELWAIN COMPANY WOULD HAVE GONE OUT OF BUSINESS, THEREBY TERMINATING COMPETITION, IF ITS STOCK HAD NOT BEEN ACQUIRED BY PETITIONER IN MAY, 1921

Petitioner contends that its acquisition of the McElwain stock could not have had the effect of substantially lessening competition because of the financial difficulties of the McElwain Company in May, 1921. Petitioner emphasizes the probable loss to stockholders and the probable insolvency under the laws of Massachusetts but for the stock acquisition. These considerations are irrelevant except for their bearing upon the probable continuance of the company as a going concern. Petitioner does not contend, and there is nothing in the record to show, that the McElwain properties would have been more valuable if dismantled than if operated so that a receiver appointed to conserve the assets for the benefit of creditors and stockholders would have disbanded the organization and permanently closed down plants. Such proof, however, is essential to a showing that the financial difficulties would have terminated competition between the companies.

It is a matter of common knowledge that many large and successful industrial concerns, as well as

numerous railroads, have at one time or another passed through receiverships. In certain cases stockholders have been completely wiped out. No inference that this would have been the probable result in this case is possible. The representative of the first preferred stockholders was extremely reluctant to approve the deal with petitioner which gave to the first preferred stockholders 82½% of par.

The evidence, moreover, does not even establish that a receivership would have resulted. The McElwain Company had been operating at a loss, but petitioner had also at times lost a million dollars a month (R. 176), and petitioner's president testified that he did not think that the combined shoe manufacturers of the United States earned anything in 1921 (R. 105). McElwain's net liquid assets had been greatly reduced, but petitioner was willing to pay over $9,460,000 for its net worth over and above all liabilities and a month later petitioner advised its stockholders that its purchase was profitable. It is represented that the McElwain Company could not sell its goods, but in April, 1921, its president advised in writing that the tide had turned, that the facts indicated that production would increase, that the sales force seemed to be extremely enthusiastic. (R. 644.) It is represented that the management was demoralized and on the verge of a physical breakdown, but the reason given by petitioner for wishing to acquire the McElwain stock, rather than

its assets, is that petitioner wished to obtain the immediate benefit of the McElwain management. (R. 50–51.)

Petitioner asserts (brief, p. 9) that "efforts to secure extensions or new capital had been exhausted." This is not supported by the record. The record shows no failure to obtain an extension. On the contrary, the record shows that credit had never been curtailed. In a letter written after the deal with petitioner was closed the McElwain president stated that the banks had not up to that time restricted its credit. (R. 579.) As to exhaustive efforts to obtain new capital, a witness reported statements of the McElwain president that new capital could not be obtained and that one banking house had been approached. (R. 350.) The strongest statement made by the only representative of a bank creditor called as a witness by petitioner was that it was his bank's "intention to ask" the McElwain Company to pay its loan. (R. 354.)

During the first nine months of its 1921 fiscal year, on an average capitalization of $13,130,350 (R. 645, 656), the McElwain Company paid dividends of $644,090.75 (R. 646), or at an annual rate of over 6½%.

Petitioner states (brief, p. 21), without any supporting citation, that since petitioner's acquisition the McElwain plants have not been operated with profit, and again (brief, p. 43), also without citation, that petitioner's experience shows that the McElwain Company's business when operated

could not pay its debts. It is difficult to reconcile these allegations with the opinion expressed by the chairman of petitioner's board in a letter dated October 6, 1927, that on a proper capitalization based on the book value of the McElwain assets—

> very good earnings could be shown on the Common Stock; quite a little more than the average on industrial. (R. 575.)

The record also does not justify petitioner's statement (brief, p. 43) that since the Federal Trade Commission made its order, repeated efforts to find a purchaser for the McElwain property, even at a substantial loss, have failed. It is submitted that no very serious effort to sell is shown when no definite sales price was ever named. (R. 560–578.)

The advances made to the McElwain Company by petitioner after May 11, 1921, do not show that the banks "exacted payment" (petitioner's brief, p. 42). The reasonable inference is that petitioner voluntarily reduced bank indebtedness. No evidence was offered that any bank had required payment of its advances.

Changes in the McElwain balance sheet between May 31, 1921, and November 30, 1921, while the company was operated as a subsidiary, are not a reliable index to what would have happened if petitioner had not taken over the company. Surplus account may have been affected by a drastic policy of charging off all doubtful accounts. The existence of

stockholders who had not exchanged their stock furnished at least an incentive to make an unfavorable income statement.

American Press Association v. *United States,* 245 Fed. 91, turns upon entirely different facts. In an action brought under the Sherman Act a consent decree had been entered in 1912 which permanently enjoined Western Newspaper Union from combining with American Press Association by purchase or otherwise. In May, 1917, the latter asked for a modification of the decree to permit the sale of its plant as a going concern to the former company. The court found that Western Newspaper, due to the greater diversity of its business, in one field offered greater service and in another field had lower costs, than American Press; that as a result American Press was being run at a loss, which loss was progressively increasing; that its business was being continued only until the question whether Western Newspaper could purchase its plant as a going concern was decided; and that if this purchase should not be permitted the directors had decided to wind up the business as speedily as possible. The court modified the decree as requested, but inserted provisions that the output of the plant should be sold only at cost plus a reasonable profit.

A case much closer to the present one is *Aluminum Company of America* v. *Federal Trade Commission,* 284 Fed. 401, 404, certiorari denied, 261 U. S. 616. This was a proceeding to review an order

of the Federal Trade Commission issued on a finding of a violation of Section 7 of the Clayton Act. The court found that due to a change in price conditions the business of the competitor which was acquired was being operated at a loss and that it appeared that this situation would continue. The court nevertheless affirmed the Commission's order.

In *Swift & Company* v. *Federal Trade Commission,* 8 F. (2d) 595, the court held that the Commission properly found that the effect of the stock acquisitions there in question was to substantially lessen competition, this Court subsequently reversing on other grounds, *Swift & Company* v. *Federal Trade Commission,* 272 U. S. 554, 561. In a concurring opinion it was said (p. 599):

> If an exception to the operation of the statute ought and is to be raised in cases where the concern whose stock is acquired is comparatively small or weak, or for any reason unlikely long to endure, it must come through statutory enactment, and not by judicial construction.

III

THE FEDERAL TRADE COMMISSION HAD POWER TO ORDER PETITIONER TO DIVEST ITSELF OF THE ASSETS OF THE M'ELWAIN COMPANY ACQUIRED BY PETITIONER AFTER THE COMMISSION HAD ISSUED A COMPLAINT CHARGING IT WITH VIOLATING SECTION 7 OF THE CLAYTON ACT

Section 11 of the Clayton Act provides that if the Commission finds that any of the provisions of Section 7 have been violated it shall issue an order

requiring the offending corporation "to cease and desist from such violations, and divest itself of the stock held * * *, in the manner and within the time fixed by said order."

In *Thatcher Manufacturing Company* v. *Federal Trade Commission, supra,* and in *Swift & Company* v. *Federal Trade Commission, supra,* this Court held that, construing Sections 7 and 11 together, the Commission had no jurisdiction if ownership of a competitor's property had been obtained prior to any action by the Commission even though this was brought about through stock illegally held. The Court clearly intimated in its opinion in the latter case that the Commission obtained jurisdiction when it issued its complaint. It said (p. 563):

> As all property and business of the two competing companies were acquired by the petitioner prior to the filing of the complaint, it is evident that no practical relief could be obtained through an order merely directing petitioner to divest itself of valueless stock. As stated in number 213, we are of opinion that under Secs. 7 and 11 of the Clayton Act the Commission is without authority to require one who has secured actual title and possession of physical property before proceedings were begun against it to dispose of the same, although secured through an unlawful purchase of stock. * * *

Federal Trade Commission v. *Western Meat Company,* 272 U. S. 554, 557, decided at the same

time, held that where the Commission had jurisdiction and found a violation of Section 7 it could order a divestment of stock that would include a divestment of the plant and property of the corporation the stock of which had been illegally acquired. This Court said (p. 559):

> Without doubt the Commission may not go beyond the words of the statute properly construed, but they must be read in the light of its general purpose and applied with a view to effectuate such purpose. Preservation of established competition was the great end which the legislature sought to secure.
>
> The purpose which the lawmakers entertained might be wholly defeated if the stock could be further used for securing the competitor's property. * * *

If the Commission can not, although it assumed jurisdiction prior to petitioner's acquisition of assets, order petitioner to divest itself of assets acquired through its illegal stock control, then Section 7 is an empty gesture and Congress in enacting it provided no effective enforcement machinery. Any company attacked for a violation of the section could use its stock control to take over assets and thus defeat the jurisdiction of the Commission. Section 11 requires the Commission to grant a hearing before issuing an order pursuant to a complaint charging a violation of Section 7 and the Commission has no equitable power to order a continuance of the *status quo pendente lite* (*National Harness*

Manufacturers' Association v. *Federal Trade Commission,* 268 Fed. 705, 707; *Chamber of Commerce* v. *Federal Trade Commission,* 280 Fed. 45, 48).

The terms of the statute are broad enough to cover the Commission's order requiring petitioner to "cease and desist from the ownership, operation, management, and control" of the McElwain assets and to divest itself thereof. (R. 543.) Where violations of Section 7 have occurred, the Commission has power under Section 11 to make an order to cease and desist from "such violations" in the "manner" fixed by its order. In this case after Section 7 had been violated, petitioner used its illegal stock control to acquire the McElwain assets. Petitioner in so acting intended to defeat the statutory purpose, "preservation of established competition." The Commission can effectively cure the violation of Section 7 only by providing in its order that the McElwain plant and property be divorced from petitioner's control.

It is immaterial that the Commission would have had no jurisdiction if petitioner had originally purchased assets instead of stock. Petitioner's purchase of stock rather than assets was more than a technical difference both in purpose and in its effect. Petitioner refused to buy the McElwain assets (petitioner's brief, p. 14); it did buy the McElwain stock. The form of the transaction also affected property rights in a marked degree. If assets had been bought at the price paid for stock,

McElwain's first preferred stockholders would have received the par value of their stock instead of 82½%, second preferred stockholders would have received over 90% of par instead of 75%, while the common stockholders would have received nothing instead of 50% of par.

IV

THE COMPLAINT OF THE FEDERAL TRADE COMMISSION WAS SUFFICIENT

The complaint alleged that while petitioner and the McElwain Company were in competition with each other in interstate commerce in the shoe business petitioner acquired all or substantially all the McElwain stock; that it still owned and controlled such stock; that such acquisition was violative of Section 7 of the Clayton Act; and that the effect of the acquisition was to substantially lessen competition between the two companies and to restrain commerce in the shoe business in the sections and communities in which the two companies were engaged in business in interstate commerce as set forth in preceding portions of the complaint. (R. 21–23.)

Petitioner's attack on the complaint is that it does not allege all the detailed evidentiary facts tending to prove the ultimate facts which were alleged. The complaint in a proceeding of this kind does not require the exactitude of an indictment at common law. *Swift and Company* v. *United States,*

196 U. S. 375, 395. A similar complaint was upheld in *Aluminum Company of America* v. *Federal Trade Commission, supra.* (No. 834, October Term, 1922, R. 2.)

CONCLUSION

It is respectfully submitted that the judgment below should be affirmed.

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NOVEMBER, 1929.

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CHARLES ELMORE CRO

No. ~~212~~ 42

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

INTERNATIONAL SHOE COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION.

PETITION FOR REHEARING.

FRANK Y. GLADNEY,
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No. 718.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

INTERNATIONAL SHOE COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION.

PETITION FOR REHEARING.

Comes now the above-named petitioner, International Shoe Company, and presents this, its petition for rehearing in the above-entitled cause, and in support thereof shows:

The application for a writ of certiorari, filed February 25, 1929, was denied April 15, 1929.

As reasons why a rehearing in this cause should be granted, petitioner begs leave to state the essential grounds of its contention:

First. Section 7 of the Clayton Act has no application to the purchase of shares in a failing corporation, and

insolvency under the definition of the Bankruptcy Act is not the test.

Second. There was no substantial competition between the two corporations and there was no prospect of future competition. The evidence is undisputed and gives no support to the conclusion of the Court of Appeals to the contrary.

I.

The one main question of law in this case has not been decided by this Court in this case or any other case, and yet it is a question frequently faced by the business interests of this country, and is now, and will continue to be, of the utmost importance to them.

The question is this: Is there a violation of Section 7 of the Clayton Law where one corporation buys the share capital of another corporation engaged in the same line of commerce, when the latter corporation is insolvent within the laws of the state governing its existence, or for any other reason is incapable of continuing its business, but has not been declared bankrupt under the Federal Bankruptcy Act? In short, the question as it concerns business is this: Can a corporation thus involved sell its business as a going and organized concern, thereby salvaging more for its creditors and stockholders than could possibly be realized by a forced liquidation or a sale of its assets?

In its findings the Commission did not pass on this question, but based its decision on the fact that the McEl-

wain Company was not bankrupt under the Federal Bankruptcy Act, and in its brief before this Court this question of law is not discussed. It is not clear whether the Circuit Court of Appeals decided the question, and this Court, in its denial of the application for a writ of certiorari, has not decided it.

Similar questions under the Sherman Law have been decided by this Court and by the courts of appeal in several circuits, and in each instance the distressed condition of the failing concern has been held to be a circumstance that justified the acquisition. Therefore, does this circumstance of insolvency (as distinguished from federal bankruptcy) remove such acquisitions from the ban of the Clayton Law as it removed them from the ban of the Sherman Law?

II.

The decision of the Circuit Court of Appeals in this case is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the case of Federal Trade Commission v. Thatcher Manufacturing Company, which Court, in 5 Federal (2nd), at page 622, paragraphs 6, 7, said and held:

> "Not every acquisition by one corporation of the stock of a competing corporation is forbidden by Section 7 of the Clayton Act. The act, by express terms, says that section 7 does not apply to a corporation 'purchasing such stock * * * and not using the same

to bring about, or in attempting to bring about, the substantial lessening of competition.' Testing the transaction (as it affected the Woodbury Company) by the whole of section 7, the evidence discloses that before the respondent acquired the stock of the Woodbury Company that corporation was engaged chiefly in the manufacture of condiment and whisky bottles, and that its manufacture of milk bottles was very small, amounting annually to about 8,000 gross out of a total production in the United States of over 1,000,000 gross. The evidence also shows that it was gradually getting out of the milk-bottle business and that, indeed, before the transaction in question arose it had determined to do so. When its stock was acquired the respondent took over its outstanding contracts, one or two in number, and filled them. The respondent's real object in acquiring the Woodbury stock, as we see it, was to acquire its patent license, that being a nonexclusive license to use the Hartford-Fairmont feeders in the manufacture of condiment bottles, fruit juice bottles, fruit containers, fruit jars and glassware for carbonated soft drinks, branches of the glassware business in which the respondent was not engaged, and, therefore, in which it was not a competitor. While the effect of the transaction upon the Woodbury Company was to stop its manufacture of milk bottles and, accordingly, to end its competition in milk-bottle manufacture, the number of milk bottles the Woodbury Company made was so inconsiderable that the lessening of competition thereby was not substantial. We are, therefore, of opinion that the evidence does not sustain the Commission's finding that the respondent's acquisition of the stock of the Woodbury Glass Company substantially lessened com-

petition between the corporations, restrained commerce and tended to create a monopoly. That part of the Commission's order is, therefore, not approved and will not be enforced." (Approved by this Court in Thatcher Mfg. Co. v. Federal Trade Commission, 272 U. S., l. c. 560.)

The undisputed facts in the instant case show that at the time of the acquisition there was no substantial competition between the two corporations; that the McElwain Company was only producing about six or seven thousand pairs of shoes per day; was not operating in excess of twenty-eight per cent of capacity, and since the previous October its operations had varied from ten to thirty per cent of capacity; that it had defaulted in the payment of dividends on its second preferred stock; that its maturing obligations could not be met and some of its banks had determined to ask for the payment of their loans; that upon publication of the balance sheet of the company, required under the laws of Massachusetts, the corporation would have been actually insolvent and faced with the alternative of sale of its assets or liquidation (so that it was practically out of the shoe business); that the International Shoe Company had orders largely in excess of the capacity of its factories; that the purchase of the shares of stock, rather than the purchase of assets, was made by the International Shoe Company solely for the purpose of acquiring additional factories, with management and operatives, to quickly manufacture shoes to fill its then orders and sup-

plement its own factories in the production of shoes for future orders.

This Court has heretofore held that, in a proceeding of this nature, the respondent shall not be condemned upon mere inferences; and in this case the findings as to substantial competition between the two companies, as to the solvency of the McElwain Company, and as to the reasons for acquisition in the form of a stock purchase, are pure inferences which are contradicted by the undisputed testimony of all the witnesses.

> "Manifestly, the Court must inquire whether the Commission's findings of fact are supported by evidence."
>
> **Fed. Trade Com. v. Curtis Pub. Co.**, 260 U. S., at page 580.

The second question presented is: Where the ability to compete has been eliminated by the insolvent condition of the seller, which is forced to retire from business, is a purchase of the share capital made to obtain a going concern with facilities to supplement those of the purchaser a violation of section 7?

This question is of great importance. The decision of the Court of Appeals, made final by the refusal of this Court to review it, is in conflict with the decision of this Court in the Thatcher case quoted.

For the foregoing reasons, petitioner respectfully urges that this petition for rehearing be granted, and that the

judgment of this Court denying the application of petitioner for certiorari be, upon further consideration, set aside, and that the petition for certiorari be granted.

Respectfully submitted,

FRANK Y. GLADNEY,
R. E. BLAKE,
J. D. WILLIAMSON,
CHARLES NAGEL,
Attorneys for Petitioner.

I, Charles Nagel, counsel for the above-named petitioner, do hereby certify that the foregoing petition for rehearing in this cause is presented in good faith and not for delay.

Charles Nagel,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

No. 42.—October Term, 1929.

International Shoe Company, Petitioner, *vs.* Federal Trade Commission.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[January 6, 1930.]

Mr. Justice Sutherland delivered the opinion of the Court.

This was a proceeding instituted by complaint of the Federal Trade Commission against petitioner charging a violation of § 7 of the Clayton Act, c. 323, 38 Stat. 730, 731, (U. S. C., Title 15, § 18), which provides:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

. . . . . .

"This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition."

The complaint charges that in May 1921, while petitioner and the W. H. McElwain Company were engaged in commerce in competition with each other, petitioner acquired all, or substantially all, of the capital stock of the McElwain Company and still owns and controls the same; that the effect of such acquisition was to substantially lessen competition between the two companies; to restrain commerce in the shoe business in the localities where both were engaged in business in interstate commerce; and to tend to create a monopoly in interstate commerce in such business. The last named charge has not been pressed and may be put aside. Upon a hearing before the commission evidence was introduced from which the commission found, (a) that the capital stock of

the McElwain Company had been acquired by the petitioner at the time charged in the complaint, (b) that the two companies were at the time in substantial competition with one another, and (c) that the effect of the acquisition was to substantially lessen competition between them and to restrain commerce. Thereupon the commission put down an order directing petitioner to divest itself of all capital stock of the McElwain Company then held or owned, directly or indirectly, by petitioner, and to cease and desist from the ownership, operation, management and control of all assets acquired from the McElwain Company subsequent to the acquisition of the capital stock, etc., and to divest itself of all such assets, etc. Upon appeal by petitioner to the court below the order of the commission was affirmed. 29 Fed. (2d) 518.

The principal grounds upon which the order here is assailed are (1) that there never was substantial competition between the two corporations, and, therefore, no foundation for the charge of substantial lessening of competition; (2) that at the time of the acquisition the financial condition of the McElwain Company was such as to necessitate liquidation or sale, and, therefore, the prospect for future competition or restraint was entirely eliminated. Since, in our opinion, these grounds are determinative, we find it unnecessary to consider the challenge to the sufficiency of the complaint and other contentions.

First. Prior to the acquisition of the capital stock in question the International Shoe Company was engaged in manufacturing leather shoes of various kinds. It had a large number of tanneries and factories and sales houses located in several states. Its business was extensive, and its products were shipped and sold to purchasers practically throughout the United States. The McElwain Company, a Massachusetts corporation with its principal office in Boston, also manufactured shoes and sold and distributed them in several states of the Union. Principally, it made and sold dress shoes for men and boys. The International made and sold a line of men's dress shoes of various styles, which, although comparable in price, and to some degree in quality, with the men's dress shoes produced by the McElwain Company, differed from them in important particulars. Such competition as there was between the two companies related alone to men's dress shoes.

The findings of the commission that this competition between the two companies was substantial and, by the acquisition of the

stock of the McElwain Company, had been substantially lessened, the Court of Appeals affirmed, holding that they were fully supported by the evidence. Upon a careful review of the record we think the evidence requires a contrary conclusion.

It is true that both companies were engaged in selling dress shoes to customers for resale within the limits of several of the same states; but the markets reached by the two companies within these states, with slight exceptions hereafter mentioned, were not the same. Certain substitutes for leather were used to some extent in the making of the McElwain dress shoes; and they were better finished, more attractive and modern in appearance, and appealed especially to city trade. The dress shoes of the International were made wholly of leather and were of a better wearing quality; but among the retailers who catered to city or fashionable wear, the McElwain shoes were preferred. The trade policies of the two companies so differed that the McElwain Company generally secured the trade of wholesalers and large retailers; while the International obtained the trade of dealers in the small communities. When requested, the McElwain Company stamped the name of the customer (that is the dealer) upon the shoes, which the International refused to do; and this operated to aid the former company to get, as generally it did get, the trade of the retailers in the larger cities. As an important result of the foregoing circumstances, witnesses estimated that about 95 per cent of the McElwain sales were in towns and cities having a population of 10,000 or over; while about 95 per cent of the sales of the International were in towns having a population of 6,000 or less. The bulk of the trade of each company was in different sections of the country, that of the McElwain Company being north of the Ohio River and east of the State of Illinois, while that of the International was in the south and west. An analysis of the sales of the International for the twelve months preceding the acquisition of the McElwain capital stock, discloses that in 42 states no men's dress shoes were sold to customers of the McElwain Company; and that in the remaining six states during the same period a total of only 52-5/12 dozen pairs of such shoes had been sold to sixteen retailers and three wholesalers who were also customers of the McElwain Company. This amounted to less than one-fourth of the production of dress shoes by the International for a single day, the daily production being about 250 dozen pairs.

It is plain from the foregoing that the product of the two companies here in question, because of the difference in appearance and workmanship, appealed to the tastes of entirely different classes of consumers; that while a portion of the product of both companies went into the same states, in the main the product of each was in fact sold to a different class of dealers and found its way into distinctly separate markets. Thus it appears that in respect of 95 per cent of the business there was no competition in fact and no contest, or observed tendency to contest, in the market for the same purchasers; and it is manifest that, when this is eliminated, what remains is of such slight consequence as to deprive the finding that there was substantial competition between the two corporations, of any real support in the evidence. The rule to be followed is stated in *Fed. Trade Comm.* v. *Curtis Co.*, 260 U. S. 568, 580:

"Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter, upon the pleadings, testimony and proceedings, a decree affirming, modifying or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission. If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the Commission—the primary fact-finding body—with direction to make additional findings, but if from all the circumstances it clearly appears that in the interest of justice the controversy should be decided without further delay the court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the Interstate Commerce Act."

Section 7 of the Clayton Act, as its terms and the nature of the remedy prescribed plainly suggest, was intended for the protection of the public against the evils which were supposed to flow from the undue lessening of competition. In *Standard Oil Co.* v. *Federal Trade Commission*, 282 Fed. 81, 87, the Court of Appeals for the Third Circuit applied the test to the Clayton Act which had theretofore been held applicable to the Sherman Act, namely, that the standard of legality was the absence or presence of prejudice to the public interest by unduly restricting competition or

unduly obstructing the due course of trade. In *Fed. Trade Comm.* v. *Sinclair Co.*, 261 U. S. 463, 476, referring to the Clayton Act and the Federal Trade Commission Act, this Court said:

"The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain."

Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree, *Standard Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 357; that is to say, to such a degree as will injuriously affect the public. Obviously, such acquisition will not produce the forbidden result if there be no pre-existing substantial competition to be affected; for the public interest is not concerned in the lessening of competition, which, to begin with, is itself without real substance. To hold that the 95 per cent of the McElwain product, sold in the large centers of population to meet a distinct demand for that particular product, was sold in competition with the 95 per cent of the International product, sold in the rural sections and the small towns to meet a wholly different demand, is to apply the word "competition" in a highly deceptive sense. And if it be conceded that the entire remaining five per cent of each companies' product (although clearly it was materially less than that) was sold in competitive markets, it is hard to see in this, competition of such substance as to fall within the serious purposes of the Clayton Act. Compare *Industrial Ass'n* v. *United States*, 268 U. S. 64, 84.

In addition to the circumstances already cited, the officers of the International testified categorically that there was in fact no substantial competition between the companies in respect of these shoes, but that at most competition was incidental and so imperceptible that it could not be located. The existence of competition is a fact disclosed by observation rather than by the processes of logic; and when these officers, skilled in the business which they have carried on, assert that there was no real competition in respect of the particular product, their testimony is to be weighed like that in respect of other matters of fact. And since there is no testimony to the contrary and no reason appears for doubting the accuracy of observation or credibility of the witnesses, their statements should be accepted.

It follows that the conclusion of the commission and the court below to the effect that the acquisition of the capital stock in question would probably result in a substantial lessening of competition must fail for lack of a necessary basis upon which to rest.

Second. Beginning in 1920 there was a marked falling off in prices and sales of shoes, as there was in other commodities; and, because of excessive commitments which the McElwain Company had made for the purchase of hides as well as the possession of large stocks of shoes and an inability to meet its indebtedness for large sums of borrowed money, the financial condition of the company became such that its officers, after long and careful consideration of the situation, concluded that the company was faced with financial ruin, and that the only alternatives presented were liquidation through a receiver or an outright sale. New orders were not coming in; losses during 1920 amounted to over $6,000,000; a surplus in May, 1920, of about $4,000,000 not only was exhausted, but within a year had been turned into a deficit of $4,382,136.70. In the spring of 1921 the company owed approximately $15,000,000 to some 60 or 70 banks and trust companies, and, in addition, nearly $2,000,000 on current account. Its factories, which had a capacity of 38,000 to 40,000 pairs of shoes per day, in 1921 were producing only 6,000 or 7,000 pairs. An examination of its balance sheets and statements and the testimony of its officers and others conversant with the situation, clearly shows that the company had reached the point where it could no longer pay its debts as they became due. In the face of these adverse circumstances it became necessary, under the laws of Massachusetts, to make up its annual financial statement, which, when filed, would disclose a condition of insolvency, as that term is defined by the statute and decisions of the State, General Laws 1921, c. 106, § 65 (3); *Holbrook* v. *International Trust Co.*, 220 Mass. 150, 155; *Steele* v. *Commissioner of Banks,* 240 Mass. 394, 397, and thus bring the company to the point of involuntary liquidation. In this situation, dividends on second preferred and common stock were discontinued, and the first preferred stockholders were notified that the company was confronted with the necessity of discontinuing dividends on that class of stock as well.

The condition of the International Company, on the contrary, notwithstanding these adverse conditions in the shoe trade gen-

erally, was excellent. That company had so conducted its affairs that its surplus stock was not excessive, and it was able to reduce prices. Instead of a decrease, it had an increase of business of about 25 per cent in the number of shoes made and sold. During the early months of 1921, orders exceeded the ability of the company to produce, so that approximately one-third of them were necessarily canceled. In this situation, with demands for its products so much in excess of its ability to fill them, the International was approached by officers of the McElwain Company with a view to a sale of its property. After some negotiation, the purchase was agreed upon. The transaction took the form of a sale of the stock instead of the assets, not, as the evidence clearly establishes, because of any desire or intention to thereby affect competition, but because by that means the personnel and organization of the McElwain factories could be retained, which, for reasons that seem satisfactory, was regarded as vitally important. It is perfectly plain from all the evidence that the controlling purpose of the International in making the purchase in question was to secure additional factories, which it could not itself build with sufficient speed to meet the pressing requirements of its business.

Shortly stated, the evidence establishes the case of a corporation in failing circumstances, the recovery of which to a normal condition was, to say the least, in gravest doubt, selling its capital to the only available purchaser in order to avoid what its officers fairly concluded was a more disastrous fate. It was suggested by the court below, and also here in argument, that instead of an outright sale, any one of several alternatives might have been adopted which would have saved the property and preserved competition; but, as it seems to us, all of these may be dismissed as lying wholly within the realm of speculation. The company might, as suggested, have obtained further financial help from the banks, with a resulting increased load of indebtedness which the company might have carried and finally paid, or, on the other hand, by the addition of which, it might more certainly have been crushed. As to that, one guess is as good as the other. It might have availed itself of a receivership, but no one is wise enough to predict with any degree of certainty whether such a course would have meant ultimate recovery or final and complete collapse. If it had proceeded, or been proceeded against, under the Bankruptcy Act, holders of the pre-

ferred stock might have paid or assumed the debts and gone forward with the business; or they might have considered it more prudent to accept whatever could be salvaged from the wreck and abandon the enterprise as a bad risk.

As between these and all other alternatives, and the alternative of a sale such as was made, the officers, stockholders and creditors, thoroughly familiar with the factors of a critical situation and more able than commission or court to foresee future contingencies, after much consideration, felt compelled to choose the latter alternative. There is no reason to doubt that in so doing they exercised a judgment which was both honest and well informed; and if aid be needed to fortify their conclusion, it may be found in the familiar presumption of rightfulness which attaches to human conduct in general. *Bank of the U. S.* v. *Dandridge,* 12 Wheat. 64, 69. Aside from these considerations, the soundness of the conclusion which they reached finds ample confirmation in the facts already discussed and others disclosed by the record.

In the light of the case thus disclosed of a corporation with resources so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure with resulting loss to its stockholders and injury to the communities where its plants were operated, we hold that the purchase of its capital stock by a competitor (there being no other prospective purchaser), not with a purpose to lessen competition, but to facilitate the accumulated business of the purchaser and with the effect of mitigating seriously injurious consequences otherwise probable, is not in contemplation of law prejudicial to the public and does not substantially lessen competition or restrain commerce within the intent of the Clayton Act. To regard such a transaction as a violation of law, as this Court suggested in *United States* v. *U. S. Steel Corp.,* 251 U. S. 417, 446-447, would "seem a distempered view of purchase and result." See also *American Press Ass'n* v. *United States,* 245 Fed. 91, 93-94.

For the reasons appearing under each of the two foregoing heads of this opinion, the judgment below must be

Reversed.

SUPREME COURT OF THE UNITED STATES.

No. 42.—October Term, 1929.

International Shoe Company, Petitioner, *vs.* Federal Trade Commission.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[January 6, 1930.]

Opinion of Mr. Justice Stone.

That the facts found by the Commission are a violation of § 7 of the Clayton Act is not questioned. Under § 11, 38 Stat. 730, [U. S. Code, Title 15, § 21], the findings of the Commission "if supported by testimony" and the inferences which it may reasonably draw from the facts proved or admitted, are conclusive upon us. See *Federal Trade Commission* v. *Pacific Paper Ass'n*, 273 U. S. 52. Congress has thus forbidden the substitution of the judgment of courts for that of the Commission where it is founded upon evidence. Conforming to this requirement I cannot say that its conclusions here lack the prescribed support. Even without such statutory limitation this Court will not set aside the findings of an administrative board or commission, upheld, as in the present case, by a unanimous court below, unless the record establishes that clear and unmistakable error has been committed. *Cincinnati, &c. Ry. Co.* v. *Interstate Commerce Comm.*, 206 U. S. 142, 154; *Cincinnati, N. O. & Texas Ry.* v. *Interstate Commerce Comm.*, 162 U. S. 184, 194; *Illinois Central R. R.* v. *Interstate Commerce Comm.*, 206 U. S. 441, 466.

The opinion of the Court and the general testimony of petitioner's officers of their conclusions that there was no competition between the two corporations (see *United States* v. *Trenton Potteries Co.*, 273 U. S. 372, 381) seem to proceed on the assumption that manufacturers, each engaged in marketing a product comparable in price and adapted to the satisfaction of the same need, do not compete if they do not sell to the same distributors.

Without stating it in detail, there appears to me to be abundant evidence that the competitive products, made by two of the largest shoe manufacturers in the world, reached the same local communities through different agencies of distribution; the one, of petitioner, through sales directly to retailers throughout the United States, the other, of the McElwain Company, through sales in thirty-eight states, chiefly to wholesalers located in cities, who in turn sold to the retail trade. From detailed evidence of this type the Commission drew, as I think it reasonably might, the inference that the rival products, through local retailers, made their appeal to the same buying public and so were competitive. From a comparative study of the statistics of sales, the Commission might also, I think, reasonably have found that the McElwain Company was successfully competing, by securing by far the larger proportion of the trade in this type of shoe, its gross sales of dress shoes in 1920 being more than $33,000,000 and in 1921 more than $15,000,000, as compared with petitioner's sales of its similar dress shoes of approximately $2,500,000.

No useful purpose would be served by reviewing the evidence at length. To refer to only two of the many items which support the findings of the Commission, the fact relied upon, that petitioner, in the year ending May 31, 1921, sold only 52-5/12 dozen pairs of the competing shoes to dealers patronizing the McElwain Company, would seem to be without significance in the light of other evidence that in one state, Missouri, where petitioner sold its product to 4,801 of the 5,150 retail shoe dealers in the state, the McElwain Company sold in the same year, chiefly through wholesalers and independent jobbers, 25,669 dozen pairs of the competing product. It appears that in 1921 petitioner sold its shoes to every retailer in Kentucky, Tennessee and Texas. In that year, when the value of the gross sales of the McElwain Company had been cut in half by business depression, it sold in those states 8,791 dozen pairs of its competing product, chiefly through independent jobbers, in addition to its sales in that territory through wholesale houses at Columbus, Ohio, and Chicago.

Apart from the more general testimony that both companies sold extensively in the same states and in the same cities, the inference from this evidence seems irresistible that in these states,

as was the case in others,* the competing products were not only offered through different systems of distribution to the same retailers, but were by them offered and sold to the ultimate consumers in their communities. Both products being made and suitable for the same use, the fact that each presented some minor advantages over the other, it might reasonably be inferred, would tend to increase, rather than diminish the competition. In fact, the chairman of petitioner's board of directors testified that its 500 salesmen were unsuccessful in their efforts to increase the sales of its Patriot Brand of dress shoes (the alleged competitive product) above about 3,000 pairs a day because they were unable to convince retailers of the superiority of petitioner's more serviceable dress shoes over the better looking dress shoes of the type manufactured by the McElwain Company.

Nor am I able to say that the McElwain Company, for the stock of which petitioner gave its own stock having a market value of $9,460,000, was then in such financial straits as to preclude the reasonable inference by the Commission that its business, conducted either through a receivership or a reorganized company, would probably continue to compete with that of petitioner. See *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 356, 357. It plainly had large value as a going concern, there was no evidence that it would have been worth more or as much if dismantled, and there was evidence that the depression in the shoe trade in 1920-1921 was then a passing phase of the business. For these reasons and others stated at length in the opinion of the court below, I think the judgment should be affirmed.

Mr. Justice HOLMES and Mr. Justice BRANDEIS concur in this opinion.

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*The petitioner sold to three retail dealers in every four in Illinois. The McElwain Company sold 9547 dozen pairs of competing shoes to independent jobbers and retailers in that state. In addition, an affiliated wholesale house located in Chicago sold about 18,000 dozen pairs. In California, where the International Shoe Company sold to seven retail dealers in every ten, the McElwain Company sold 1586 dozen pairs to retailers and independent jobbers; and an affiliated wholesaler located at San Francisco sold, almost wholly within the state, about 10,000 dozen pairs of the competing shoes.